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SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

SECTION.
18-1-101. Lien holder form.

18-1-101. Lien holder form.

(a)(1) Any attachment, claim, encumbrance, financing statement, lien, mortgage, or security agreement filed of record against any real or personal property and any judgment filed of record against any person, firm, or corporation shall display the name, address, and telephone number of the claim holder, lien holder, or judgment creditor, together with the name and title of the person authorized to release the claim, lien, or judgment, or the person's successor.

(2) If an attachment, a claim, an encumbrance, a financing statement, a lien, a mortgage, a security agreement, or a judgment is filed on or after August 13, 2001, and does not comply with subdivision (a)(1) of this section, notice of an action commenced under § 18-50-101 et seq. shall be given by publication as provided in § 18-50-105.

(b) Subdivision (a)(2) of this section shall not be applicable to:

(1) Any claim holder, lien holder, or judgment creditor that is a financial institution insured by the Federal Deposit Insurance Corporation; or

(2) Motor vehicle titles.

(c) Clerks responsible for recording the documents enumerated in subsection (a) of this section shall ensure that the documents presented for filing display the information required by subsection (a) of this section.

(d) The validity or priority of any attachment, claim, encumbrance, financing statement, lien, mortgage, or security agreement currently on file, or filed of record after August 13, 2001, shall not be affected by the failure of any person to comply with the requirements of this section.

History. Acts 2001, No. 1125, § 1; 2007, No. 1411, § 1.

Amendments. The 2007 amendment added (a)(2) and made a related change; and substituted "Subdivision (a)(2)" for "Subsection (a)" in (b).

CHAPTER 3

UNIFORM STATUTORY RULE AGAINST PERPETUITIES

Effective Dates. Acts 2007, No. 240, § 5: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkan-

sas that the current extremely harsh remedy under the rule against perpetuities that renders a grantor's entire grant void if the grant violates the rule is outdated and should be replaced; that the common law rule fosters litigation at great cost to the citizens of this state because of its many complexities, with often devastating consequences to estates; and that the revision by this act of the common law remedy to permit the likely occurrence that a grant will vest or to permit a court to reform a grant that does not vest in the manner that most likely approximate the transferor's manifested plan is immediately necessary for the good of the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

18-3-101. Statutory rule against perpetuities.

(a) A nonvested property interest is invalid unless:

(1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) the interest either vests or terminates within 90 years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) when the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of

the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

History. Acts 2007, No. 240, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Fifty-one Flowers: Post-Perpetuities War Law and Arkansas's Adoption of USRAP, 29 U. Ark. Little Rock L. Rev. 411.

18-3-102. When nonvested property interest or power of appointment created.

(a) Except as provided in subsections (b) and (c) of this section and in § 18-3-105(a), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in § 18-3-101(b) or § 18-3-101(c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

History. Acts 2007, No. 240, § 1.

18-3-103. Reformation.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by § 18-3-101(a)(2), § 18-3-101(b)(2), or § 18-3-101(c)(2) if:

(1) a nonvested property interest or a power of appointment becomes invalid under § 18-3-101;

(2) a class gift is not but might become invalid under § 18-3-101 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by § 18-3-101(a)(1) can vest but not within 90 years after its creation.

History. Acts 2007, No. 240, § 1.

18-3-104. Exclusions from statutory rule against perpetuities.

Section 18-3-101 does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) a power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this State.

History. Acts 2007, No. 240, § 1.

18-3-105. Prospective application.

(a) Except as extended by subsection (b) of this section, this chapter applies to a nonvested property interest or a power of appointment that is created on or after March 9, 2007. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before March 9, 2007 and is determined in a judicial proceeding, commenced on or after March 9, 2007, to violate this State's rule against perpetuities as that rule existed before March 9, 2007, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History. Acts 2007, No. 240, § 1.

18-3-106. Short title.

This chapter may be cited as the Uniform Statutory Rule Against Perpetuities.

History. Acts 2007, No. 240, § 1.

18-3-107. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History. Acts 2007, No. 240, § 1.

18-3-108. [Reserved.]

18-3-109. Supercession of common law.

This chapter supersedes the rule of the common law known as the rule against perpetuities.

History. Acts 2007, No. 240, § 1.

SUBTITLE 2. REAL PROPERTY

CHAPTER 11

REAL PROPERTY INTERESTS GENERALLY

SUBCHAPTER.

Subchapter 1 — Ownership and Possession

SECTION.

18-11-102. Payment of taxes on unimproved or unenclosed land deemed possession.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Property Law, 25 U. Ark. Little Rock L. Rev. 1025.

CASE NOTES

Actual Adverse Possession.

Judgment ruling that appellant did not own any property on the northeast bank of the river where it flowed by appellees' lots and finding that appellant failed to establish adverse possession was affirmed; appellant's payment of taxes was irrelevant because appellant did not have color of title to the land in dispute. Rio Vista, Inc. v. Miles, 2010 Ark. App. 190, — S.W.3d — (2010).

18-11-106. Adverse possession.

(a) To establish adverse possession of real property, the person and those under whom the person claims must have actual or constructive possession of the real property being claimed and have either:

(1)(A) Held color of title to the real property for a period of at least seven (7) years and during that time paid ad valorem taxes on the real property.

(B) For purposes of this subdivision (a)(1), color of title may be established by the person claiming adversely to the true owner by paying the ad valorem taxes for a period of at least seven (7) years for unimproved and unenclosed land or fifteen (15) years for wild and unimproved land, provided the true owner has not also paid the ad valorem taxes or made a bona fide good faith effort to pay the ad valorem taxes which were misapplied by the state and local taxing authority; or

(2) Held color of title to real property contiguous to the real property being claimed by adverse possession for a period of at least seven (7) years and during that time paid ad valorem taxes on the contiguous real property to which the person has color of title.

(b)(1) The requirements of subsection (a) of this section with regard to payment of ad valorem taxes shall not apply to a person or entity exempt from the payment of ad valorem taxes by law.

(2) For the person or entity exempt from the payment of ad valorem taxes to establish adverse possession of real property, the person or entity must have:

(A) Actual or constructive possession of the real property being claimed and held color of title to the real property for a period of at least seven (7) years; or

(B) Actual or constructive possession of the real property being claimed and held color of title to the real property contiguous to the real property being claimed by adverse possession for a period of at least seven (7) years.

(c) The requirements of this section are in addition to all other requirements for establishing adverse possession.

(d)(1) This section shall not repeal any requirement under existing case law for establishing adverse possession but shall be supplemental to existing case law.

(2) This section shall not diminish the presumption of possession of unimproved and unenclosed land created under § 18-11-102 by payment of taxes for seven (7) years under color of title or the presumption of color of title on wild and unimproved land created under § 18-11-103 by payment of taxes for fifteen (15) consecutive years.

History. Acts 1995, No. 776, § 1; 2005, No. 84, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Property Law, 28 U. Ark. Little Rock L. Rev. 385.

CASE NOTES

Analysis

In General.
Adverse Possession Not Shown.
Jurisdiction.
Property Contiguous to Property Claimed.
Statutory Proof Not Applicable.

In General.

Although defendant conceded that plaintiff met the requirements of subdivision (a)(2) of this section by paying taxes on said lots for at least seven years, there was insufficient evidence that plaintiff's occupation of the property was exclusive, continuous, notorious, and undertaken with an intent to hold the property as against the true owner and, thus, the trial court erred in finding in plaintiff's favor. Thompson v. Fischer, 364 Ark. 380, 220 S.W.3d 622 (2005).

A property owner had not acquired the disputed property by adverse possession by placing a lamp and benches thereon and by keeping it clear of debris because a church, which previously owned the property, had not been charged with actual or constructive notice that the disputed property was being claimed by the owner, and continued to use the disputed property for its maintenance activities. Follett v. Fitzsimmons, 103 Ark. App. 82, 286 S.W.3d 742 (2008).

Neighbors failed to show adverse use of a landowner's property because they failed to comply with this section by showing payment of taxes and failed to show that their use of the property was notorious, hostile, and exclusive; rather, the use was permissive. The court could not consider property tax receipts submitted along with the neighbors' motion for new trial. Barnett v. Gomance, 2010 Ark. App. 109, — S.W.3d — (2010).

Judgment ruling that appellant did not own any property on the northeast bank of the river where it flowed by appellees' lots and finding that appellant failed to establish adverse possession was affirmed; appellant's payment of taxes was irrelevant because appellant did not have color of title to the land in dispute. Rio Vista, Inc. v. Miles, 2010 Ark. App. 190, — S.W.3d — (2010).

Summary judgment was properly awarded to defendant on plaintiff's adverse possession claim because the trial court did not err in finding that plaintiff was required to prove that plaintiff had paid taxes on the property; the amendment to the statute took effect in 1995 and plaintiff's claim of adverse possession had not yet begun to run, let alone vest. Cleary v. Sledge Props., 2010 Ark. App. 755, — S.W.3d — (2010).

Trial court erred in finding that appellees acquired title to property once owned by appellants by adverse possession because while the evidence showed that ap-

pellees paid taxes from 1998 through 2007 on 30.1 acres in two quarter-quarter sections, the records did not show that they paid taxes on the specific piece of property in dispute. Gibbs v. Stiles, 2011 Ark. App. 302, — S.W.3d — (2011).

Adverse Possession Not Shown.

Property owners had not established adverse possession of property between the survey line and the old fence because, even after clearing, photographs depicted a fence line intertwined and covered with vines, briars, bushes, and bramble to the point that the fence was not even visible, and the fence was in a thick, overgrown tree line that was invisible from the adjoining landowners' side of the thicket. The fence thus was not sufficient to put the adjoining landowners or their predecessors on notice of adverse possession. Emerson v. Linkinogger, 2011 Ark. App. 234, — S.W.3d — (2011).

Jurisdiction.

Where a railroad filed an ejectment action against respondents, who occupied its right-of-way, the trial court erred in not dismissing respondents' counterclaim seeking to quiet title in the right-of-way and alleging abandonment and adverse possession; under 49 U.S.C.S. § 10501(b), such claims were exclusively within the jurisdiction of the Surface Transportation Board. Ouachita R.R., Inc. v. Circuit Court, 361 Ark. 333, 206 S.W.3d 811 (2005).

Property Contiguous to Property Claimed.

Trial court erred in denying plaintiffs' motion for a new trial because subdivision (a)(2) of this section required only that the real property owned by plaintiffs be contiguous to the property claimed by adverse possession; thus, the matter was remanded to determine if that was the case. Roberts v. Boyd, 94 Ark. App. 345, 230 S.W.3d 301 (2006).

Statutory Proof Not Applicable.

Appellate court reversed a trial court's order quieting title in favor of landowners as the property had been divided by the barbed wire fence for more than 35 years, the landowner's possession of the land up to the fence was visible, notorious, distinct, exclusive, hostile, and with the intent to hold against the property owners and, since their claim of adverse possession accrued before 1995, the landowners were not required to show that they had paid property taxes on the land. Boyette v. Vogelpohl, 92 Ark. App. 436, 214 S.W.3d 874 (2005).

Because statutory changes imposing additional requirements to show adverse possession were passed in 1995, those additional requirements were not applicable where one claimed possession of land since 1985. Ford v. Howard, 2009 Ark. App. 196, 300 S.W.3d 505 (2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 574 (Sept. 10, 2009).

Subchapter 2 — Property of Religious Societies

18-11-201. Trustees to hold in perpetual succession.

CASE NOTES

Neutral-Principles Approach.

Circuit court did not err in quieting title in favor of the worship center, because under the neutral-principles approach, nothing in the language of the deed suggested that the owner had the intention of creating a trust in favor of either the national church or the state church, and neither the national church nor the state church had an ownership interest in the property at the time of the conveyance and neither was a party to the transaction Arkansas Annual Conf. of the AME Church, Inc. v. New Direction Praise & Worship Ctr., Inc., 375 Ark. 428, 291 S.W.3d 562 (2009), cert. denied, Ark. Annual Conf. of the African Methodist Episcopal Church, Inc. v. New Direction Praise & Worship Ctr., Inc., — U.S. —, 130 S. Ct. 70, 175 L. Ed. 2d 26 (2009).

18-11-202. Authority of trustees.

CASE NOTES

Neutral-Principles Approach.

Circuit court did not err in quieting title in favor of the worship center, because under the neutral-principles approach, nothing in the language of the deed suggested that the owner had the intention of creating a trust in favor of either the national church or the state church, and neither the national church nor the state church had an ownership interest in the property at the time of the conveyance and neither was a party to the transaction Arkansas Annual Conf. of the AME Church, Inc. v. New Direction Praise & Worship Ctr., Inc., 375 Ark. 428, 291 S.W.3d 562 (2009), cert. denied, Ark. Annual Conf. of the African Methodist Episcopal Church, Inc. v. New Direction Praise & Worship Ctr., Inc., — U.S. —, 130 S. Ct. 70, 175 L. Ed. 2d 26 (2009).

Subchapter 3 — Recreational Uses — Owner's Liability

SECTION.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

18-11-301. Purpose.

RESEARCH REFERENCES

Ark. L. Rev. The Arkansas Recreational-Use Statute: Past, Present, and Future Application for Arkansas Landowners and Recreational Users of Land, 60 Ark. L. Rev. 849.

CASE NOTES

In General.

Injured persons met their burden of proof under the Arkansas Recreational Use Statute, § 18-11-301 et seq., by showing that the landowners maliciously failed to guard or warn against a known ultrahazardous condition and, therefore, the landowners were not immune from liability to persons entering the landowners' property for recreational purposes, as provided in the immunity exception under § 18-11-307(1). Carr v. Nance, 2010 Ark. 497, — S.W.3d — (2010).

18-11-302. Definitions.

As used in this subchapter:

(1) "Charge" means an admission fee for permission to go upon or use the land, but does not include:

(A) The sharing of game, fish, or other products of recreational use; or

(B) Contributions in kind, services, or cash paid to reduce or offset costs and eliminate losses from recreational use;

(2) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty;

(3) "Owner" means the possessor of a fee interest, a tenant, lessee, holder of a conservation easement as defined in § 15-20-402, occupant, or person in control of the premises;

(4) "Public" and "person" includes the Young Men's Christian Association, Young Women's Christian Association, Boy Scouts of America, Girl Scouts of the United States of America, Boys & Girls Clubs of America, churches, religious organizations, fraternal organizations, and other similar organizations; and

(5) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof:

(A) Hunting;
(B) Fishing;
(C) Swimming;
(D) Boating;
(E) Camping;
(F) Picnicking;
(G) Hiking;
(H) Pleasure driving;
(I) Nature study;
(J) Water skiing;
(K) Winter sports;
(L) Spelunking;
(M) Viewing or enjoying historical, archeological, scenic, or scientific sites; and
(N) Any other activity undertaken for exercise, education, relaxation, or pleasure on land owned by another.

History. Acts 1965, No. 51, § 2; 1983, No. 168, §§ 1, 2; 1985, No. 959, § 1; A.S.A. 1947, § 50-1102; Acts 1991, No. 485, § 1; 2007, No. 677, § 1.

Amendments. The 2007 amendment inserted "holder of a conservation easement as defined in § 15-20-402" in (3).

18-11-306. Land leased to state or political subdivision — Conservation easement.

Unless otherwise agreed in writing, the provisions of §§ 18-11-304 and 18-11-305 are applicable to the duties and liability of:

(1) An owner of land leased to the state or a political subdivision of the state for recreational purposes;

(2) An owner of an interest in the real property burdened by a conservation easement as defined in § 15-20-402; or

(3) A holder of a conservation easement as defined in § 15-20-402.

History. Acts 1965, No. 51, § 5; A.S.A. 1947, § 50-1105; Acts 2007, No. 677, § 2.

Amendments. The 2007 amendment substituted "are" for "shall be deemed" in the introductory paragraph; added the (1) designation; substituted "or a political subdivision of the state for recreational purposes" for "or any subdivision thereof, for recreation purposes" in (1)"; added (2) and (3); and made related changes.

18-11-307. Exceptions to owner's immunity.

RESEARCH REFERENCES

Ark. L. Rev. The Arkansas Recreational-Use Statute: Past, Present, and Future Application for Arkansas Landowners and Recreational Users of Land, 60 Ark. L. Rev. 849.

CASE NOTES

Analysis

Failure to Warn.
Ultra-Hazardous Condition.

Failure to Warn.

Injured persons met their burden of proof under the Arkansas Recreational Use Statute, § 18-11-301 et seq., by showing that the landowners maliciously failed to guard or warn against a known ultra-hazardous condition and, therefore, the landowners were not immune from liability to persons entering the landowners' property for recreational purposes, as provided in the immunity exception under subdivision (1) of this section. Carr v. Nance, 2010 Ark. 497, — S.W.3d — (2010).

Ultra-Hazardous Condition.

Where an all-terrain vehicle (ATV) rider was injured when the rider drove the ATV into a steel cable on the landowners' property, it was not the hanging of a cable per se that constituted the ultra-hazardous activity, but the hanging of an unmarked cable at a dangerous height in an area in which the landowners knew there were people traveling on ATVs. Carr v. Nance, 2010 Ark. 497, — S.W.3d — (2010).

Subchapter 4 — Posted Land

SECTION.
18-11-406. Color of paint — Unlawful posting — Exception.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

18-11-406. Color of paint — Unlawful posting — Exception.

(a)(1) The color of paint prescribed by the Arkansas Forestry Commission for posting purposes shall not be used on trees or posts for any other purpose.

(2) Any person who knowingly paints such color on any tree or post for any purpose other than posting real property pursuant to this subchapter shall be guilty of a Class B misdemeanor.

(b)(1) It shall be unlawful for any person to post any lands which the person does not own or lease except with the written permission of the owner or lessee.

(2) Any person violating this section shall be guilty of a Class B misdemeanor.

History. Acts 1989, No. 35, §§ 4, 5; 2011, No. 271, § 1.

Amendments. The 2011 amendment substituted "Arkansas" for "State" in (a)(1).

Subchapter 6 — Municipal Water Supply Purposes — Owner's Immunity

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Effective Dates. Acts 2005, No. 1977, § 2: Apr. 11, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is nothing currently in the law that grants immunity from liability to persons who make property available for municipal water supply purposes; that this act provides sound public policy for the State of Arkansas; and that this act is immediately necessary because the state should encourage property owners to make property available for municipal water supply purposes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

18-11-601. Purpose.

The purpose of this subchapter is to encourage owners of land to make land and water areas available to municipal governments for municipal water supply purposes by limiting the liability of landowners toward persons entering on the land and water areas.

History. Acts 2005, No. 1977, § 1.

18-11-602. Definitions.

As used in this subchapter:

(1) "Land" means real property, roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment when attached to the real property;

(2) "Municipal water supply purpose" includes, but is not imited to, any of the following, separately or in any combination:

(A) Construction or maintenance of a water intake structure;

(B) Maintenance of a water intake source;

(C) Research concerning a water intake source or structure; and

(D) Other activity associated with a water intake source or structure; and

(3) "Owner" means the possessor of a fee interest or a tenant, lessee, occupant, or person in control of the land.

History. Acts 2005, No. 1977, § 1.

18-11-603. Construction.

Nothing in this subchapter shall be construed to:

(1) Create a duty of care or a basis for liability for injury to persons or property; or

(2) Relieve any person using the land of another for a municipal water supply purpose from any obligation that he or she may have in the absence of this subchapter to exercise care in his or her use of the land and in his or her activities on the land or relieve any person from the legal consequences of failure to employ such care.

History. Acts 2005, No. 1977, § 1.

18-11-604. Duty of care.

Except as specifically provided in § 18-11-607, an owner owes no duty of care to:

(1) Keep his or her land safe for entry or use by another for a municipal water supply purpose; or

(2) Give any warning of a dangerous condition, use, structure, or activity on his or her land to a person entering for a municipal water supply purpose.

History. Acts 2005, No. 1977, § 1.

18-11-605. Owner's immunity from liability.

Except as specifically provided in § 18-11-607, an owner who, either directly or indirectly, invites or permits any person to use his or her land for a municipal water supply purpose does not:

(1) Extend any assurance that the land is safe for any purpose;

(2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of the person; or

(4) Assume responsibility for or incur liability for injury to the person or property caused by any natural or artificial condition, structure, or personal property on the land.

History. Acts 2005, No. 1977, § 1.

18-11-606. Land leased to municipality.

Unless otherwise agreed to in writing, the provisions of §§ 18-11-604 and 18-11-605 shall be deemed the sole source of the duties and liability of an owner who leased or otherwise provided land to a municipality for a municipal water supply purpose.

History. Acts 2005, No. 1977, § 1.

18-11-607. Exceptions to owner's immunity.

Nothing in this subchapter limits in any way liability that otherwise exists for malicious, but not mere negligent, failure to guard or warn against an ultra-hazardous condition, structure, personal property, use, or activity actually known to the owner to be dangerous.

History. Acts 2005, No. 1977, § 1.

CHAPTER 12
CONVEYANCES

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

RESEARCH REFERENCES

Ark. L. Notes. Circo, Why is This Boilerplate in My Real Estate Contract?, 2005 Arkansas L. Notes 1.

18-12-102. Transfer by deed — Warranty.

CASE NOTES

Covenants.

Words "grant, bargain and sell" in a deed granting a life estate created a covenant or warranty that the grantor was seized of an indefeasible estate in fee simple. A trial court erred in granting summary judgment to defendants on the life estate grantee's claims for breach of warranty, estoppel by deed, and conversion, although defendants did not own the property at the time they granted the life estate; defendants clearly made warranties to the grantee and should have been required to honor them. Jackson v. Smith, 2010 Ark. App. 681, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 833 (Dec. 1, 2010).

18-12-103. Restrictive covenants.

(a) As used in this section, "restrictive covenant" means a restriction on the use or development of real property regardless of whether the restriction is created by a covenant in a deed or bill of assurance, or by any other instrument.

(b) An instrument creating a restrictive covenant is not effective to restrict the use or development of real property unless the instrument purporting to restrict the use or development of the real property is executed by the owners of the real property and recorded in the office of the recorder of the county in which the property is located.

(c) If the instrument creating a restrictive covenant contains separate sections stating the duration of the covenant and the requirements for amending the covenant, the section or sections stating the duration of the covenant shall be read independently of the section or sections stating the requirements for amending the covenant so that the duration of the covenant does not limit the ability to amend a restrictive covenant at any time.

History. Acts 1965, No. 395, § 1; A.S.A. 1947, § 50-427; Acts 2011, No. 185, § 2.

A.C.R.C. Notes. Acts 2011, No. 185, § 1, provided: "Findings and legislative intent.

"(a) The General Assembly finds that:

"(1) The decision of the Arkansas Court of Appeals in Rausch Coleman Homes, LLC v. Brech, 2009 Ark. App. 225, 303 S.W.3d 456 (Ark. App. 2009) unduly restricts the use and development of real property; and

"(2) It is in the best interests of the people of the State of Arkansas to foster the ability of landowners to amend private covenants to obtain the best possible use of the landowners' real property.

"(b) It is the intent of the General Assembly by passing this act to encourage and promote the use and economic development of land in the State of Arkansas by clarifying the requirements for amending covenants restricting the use or development of real property."

Amendments. The 2011 amendment rewrote the section.

CASE NOTES

Enforcement.

Restrictive covenant prohibiting the subdividing of lots in phase one of a subdivision did not apply to appellees' phase two property; there were no restrictions clearly applicable to phase two property and the ambiguity was resolved in favor of appellees and defeated the contention

that the plat alone adopted phase one restrictions for phase two property. Estes v. Merritt, 96 Ark. App. 380, 242 S.W.3d 295 (2006).

Covenant limiting the use of each lot to a single family residence and incidental outbuildings was not void as an unreasonable restraint on alienation where the developer was aware of the conditions and requirements when it purchased the property and it failed to show that there had been a change in conditions sufficient to warrant invalidation of the covenant. Royal Oaks Vista LLC v. Maddox, 372 Ark. 119, 271 S.W.3d 479 (2008).

18-12-107. Transfer fee covenants prohibited.

(a) As used in this section:

(1) "Association" means a nonprofit, mandatory-membership organization:

(A) Comprised of owners of homes, condominiums, units in a horizontal property regime, cooperatives, manufactured homes, or any other interest in real property; and

(B) Created pursuant to declaration, covenant, bill of assurance, master deed, or other applicable law;

(2) "Licensee" means a licensee as defined in § 17-42-103;

(3) "Transfer" means the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state;

(4)(A) "Transfer fee" means a fee or charge that obligates a transferee or transferor of real property to pay a fee or charge to a third person:

(i) Upon a transfer of an interest in the real property; or

(ii) For permitting the transfer.

(B) "Transfer fee" does not include a tax, assessment, fee, or charge imposed by a governmental authority under applicable law; and

(5)(A) "Transfer fee covenant" means a provision in a recorded document or an unrecorded document imposing a transfer fee that purports to run with the land or bind current owners or successors in title to real property located in this state.

(B) "Transfer fee covenant" includes a lien or claim of lien to secure payment of a transfer fee.

(C) "Transfer fee covenant" does not include a provision:

(i) Of a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement that obligates a party to the agreement to pay another party to the agreement as full or partial consideration for the agreement or for a waiver of rights under the agreement an amount determined by the agreement if the amount is:

(a) Payable on a one-time basis only upon the next transfer of an interest in the specified real property and, once paid, shall not bind successors in title to the property;

(b) A loan assumption fee or other fee charged in connection with a transfer by a lender holding or obtaining a lien on the transferred real property; or

(c) A fee or commission paid to a licensee for services rendered in connection with a transfer of the property for which the fee or commission is paid;

(ii) In a deed, memorandum, or other document recorded for the purpose of providing record notice of an agreement described in subdivision (5)(C)(i) of this section;

(iii) Of a document requiring payment of a fee or charge to an association to be used exclusively for the purposes authorized in the document, as long as no portion of the fee is required to be passed through to a third party designated or identifiable by description in the document or another document referenced in the document; or

(iv) Of a document affecting real property that requires payment of a fee or charge to an organization described in § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code as it existed on January 1, 2011, to be used exclusively to support:

(a) Cultural, educational, charitable, recreational, environmental, conservational, or other similar activities benefiting the real property; or

(b) The community in which the property is located.

(b)(1) A transfer fee covenant recorded with respect to real property in this state after July 27, 2011:

(A) Does not run with the title to the real property; and

(B) Is not binding upon or enforceable at law or in equity against:

(i) The real property; or

(ii) A subsequent owner, purchaser, or mortgagee of an interest in the real property.

(2) This section does not validate a transfer fee covenant recorded in this state before July 27, 2011.

History. Acts 2011, No. 145, § 1.

Subchapter 2 — Acknowledgment and Proof of Instruments

SECTION.

RESEARCH REFERENCES

Ark. L. Notes. Atkinson, Laurence, The Avoidance by an Arkansas Bankruptcy Trustee of a Mortgage Defectively Acknowledged, 2003 Arkansas L. Notes 1.

18-12-205. Certificate of acknowledgment.

(a) Any court or officer that takes a proof or an acknowledgment of any instrument affecting real property shall grant a certificate of the proof or acknowledgment.

(b) The court or officer shall cause the certificate of the proof or acknowledgment to be endorsed on the instrument affecting real property.

(c) The certificate of the proof or acknowledgment shall be signed by the clerk of the court or by the officer if he or she has a seal of office.

History. Rev. Stat., ch. 31, § 16; C. & M. Dig., § 1519; Pope's Dig., § 1828; A.S.A. 1947, § 49-206; Acts 2007, No. 827, § 142.

Amendments. The 2007 amendment rewrote the section.

18-12-206. Manner of making acknowledgment — Proof of deed or instrument — Proof of identity of grantor or witness.

CASE NOTES

Analysis

In General.
Consideration and Purposes.

In General.

Where a mortgage only contained a jurat by a notary public which simply stated "Given under my hand and official seal this 24th day of November, 2003. [Signed by] Maria F. Looper," the jurat was not an acknowledgment and the mortgage lien was unperfected. In re Beene, 349 B.R. 574 (Bankr. W.D. Ark. 2006).

Consideration and Purposes.

Debtors' amended plan was denied confirmation on Chapter 13 trustee's objection that the plan failed the best interest of creditors test of 11 U.S.C.S. § 1325(a)(4) where a secured creditor's mortgage instrument was defective for lack of a sworn acknowledgement. In re Beene, — B.R. —, 2006 Bankr. LEXIS 1877 (Bankr. W.D. Ark. Aug. 27, 2006).

18-12-207. Acknowledgment by corporations.

CASE NOTES

Substantial Compliance.

Even though a mortgage did not contain an acknowledgment that complied with former § 18-12-207, the facts conclusively showed that the mortgagor was acting on behalf of his corporation when he signed the mortgage with the bank, and the trial court properly found that the bank's mortgage was valid and superior to a building material supply company's lien. Nat'l Home Ctrs. v. First Ark. Valley Bank, 66 Ark. 522, 237 S.W.3d 60 (2006).

18-12-208. Validation of instruments affecting title to property.

CASE NOTES

Lack of Acknowledgment.

Where a mortgage only contained a jurat by a notary public which simply stated "Given under my hand and official seal this 24th day of November, 2003. [Signed by] Maria F. Looper," the mortgage was defective as it lacked an acknowledgement; this section did not cure the defect as it does not act to supply an acknowledgment when in fact there is none. In re Beene, 349 B.R. 574 (Bankr. W.D. Ark. 2006).

Debtors' amended plan was denied confirmation on Chapter 13 trustee's objection that the plan failed the best interest of creditors test of 11 U.S.C.S. § 1325(a)(4) where a secured creditor's mortgage instrument was defective for lack of a sworn acknowledgement. In re Beene, — B.R. —, 2006 Bankr. LEXIS 1877 (Bankr. W.D. Ark. Aug. 27, 2006).

Jurat attached to a mortgage was not an acknowledgment and, therefore, the mortgage lien was unperfected under Arkansas law; the provisions of this section could not be used to cure the defect in the mortgage because it does not act to supply an acknowledgment when in fact there was none. In re Beene, 354 B.R. 856 (Bankr. W.D. Ark. 2006).

This curative statute did not operate to cure a mortgage deed that failed to comply with the acknowledgement requirements in §§ 16-47-106 and 16-47-101 because the transaction occurred after the passage of the statute. Thus, a mortgage lien was not perfected and could be avoided by a trustee under 11 U.S.C.S. §§ 544(a) and 550(a). Williams v. JPMorgan Chase Bank, N.A. (In re Stewart), 422 B.R. 185 (Bankr. W.D. Ark. 2009).

Subchapter 3 — Fee Tail

18-12-303. Rule in Shelley's Case abolished.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Property Law, Abolishment of Rule in Shelley's Case, 26 U. Ark. Little Rock L. Rev. 459.

Subchapter 4 — Husband and Wife

18-12-401. Deed between spouses.

CASE NOTES

Cited: McCracken v. McCracken, 2009 Ark. App. 758, — S.W.3d — (2009).

18-12-402. Relinquishment of dower or curtesy in spouse's land.

CASE NOTES

Contract for Relinquishment.

Wife executed a quitclaim deed and an agreed order conveying her interest in the marital home to her ex-husband, but no such release of rights was executed by the homeowner; therefore, because homeowner did not join in the deed with his wife when she conveyed her interest in the property to her ex-husband, the statutory requirements of this section were not sat-

isfied. O'Marra v. Mackool, 361 Ark. 32, 204 S.W.3d 49 (2005).

18-12-403. Conveyance, etc., of homestead.

CASE NOTES

Instruments Affecting Homestead.

Homestead exemption could extend to a revocable trust where the person claiming the exemption was the trustee and beneficiary, and maintained the property as the person's principal place of business, because this section invalidated any conveyance affecting entitlement to a homestead exemption in which a spouse did not join in the execution. Fitton v. Bank of Little Rock, 2010 Ark. 280, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 400 (Aug. 6, 2010).

Subchapter 6 — Miscellaneous Conveyances

Effective Dates. Acts 2005, No. 2270, § 2: Apr. 14, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the titles to real property rights purchased at delinquent tax sales are not marketable; that the inability to receive marketable title to real property is an unreasonable alienation of real property and harmful to the economy; and that this act will permit the marketability of real property rights purchased at delinquent tax sales for the good of the state and its citizens. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

18-12-601. After-acquired title.

CASE NOTES

Applicability.

Although creditor banks argued that their lis pendens filings and quitclaim deeds given to debtor by her relatives related back to prior transfers and operated to perfect their interests in the properties prior to the preference period, because the bankruptcy court found that the lis pendens filings and quitclaim deeds were avoidable preferences under 11 U.S.C.S. § 547(b), the doctrine of after-acquired title was not effective to secure the banks' interests, if any, in the properties; moreover, the facts did not involve the simple defective acknowledgment of a mortgage, but rather, the entities that mortgaged these properties to the banks in fact had no legal interest in the proper-

ties themselves. Rice v. First Ark. Valley Bank (In re May), 310 B.R. 405 (Bankr. E.D. Ark. 2004).

The common law doctrine of after-acquired title, codified in this section, did not apply to a case of a foundation and its representative granting a life estate to a grantee in property which the grantors did not own and did not later acquire. Jackson v. Smith, 2010 Ark. App. 681, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 833 (Dec. 1, 2010).

18-12-605. Deeds of administrators, executors, guardians, commissioners, and sheriffs.

(a)(1) All deeds of conveyance made by an administrator, an executor, a guardian, or a commissioner, deeds of real estate sold under an execution made and executed by a sheriff, and deeds made and executed by a trustee or an attorney pursuant to a foreclosure of a deed of trust or mortgage, duly made and executed, acknowledged, and recorded, as now required by law and purporting to convey real estate, shall vest in the grantee and his or her heirs and assigns a good and valid title, both in law and in equity.

(2)(A) The deeds shall be evidence of the facts recited in the deeds and of the legality and regularity of the sale of the real estate so conveyed.

(B) However, the deeds do not warrant title to a subsequent grantee, and any subsequent grantee may not assert or claim any warranty of title deriving from the deeds.

(b) Nothing in this section shall prohibit a deed made under subdivision (a)(1) of this section from warranting title by express use of warranty language.

(c) Every deed so made, executed, acknowledged, and recorded, or a certified copy of the deed, under the seal of the recorder of the proper county shall be received in evidence in any court in this state without further proof of its execution.

History. Acts 1853, §§ 1, 2, p. 207; C. & M. Dig., §§ 1534, 1535; Pope's Dig., §§ 1844, 1845; A.S.A. 1947, §§ 50-419, 50-420; Acts 2005, No. 1884, § 1.

18-12-608. Beneficiary deeds — Terms — Recording required.

(a)(1)(A) A beneficiary deed is a deed without current tangible consideration that conveys upon the death of the owner an ownership interest in real property other than a leasehold or lien interest to a grantee designated by the owner and that expressly states that the deed is not to take effect until the death of the owner.

(B)(i) A beneficiary deed transfers the interest to the designated grantee effective upon the death of the owner, subject to:

(a) All conveyances, assignments, contracts, leases, mortgages, deeds of trust, liens, security pledges, oil, gas, or mineral leases, and other encumbrances made by the owner or to which the real property was subject at the time of the owner's death, whether or not the conveyance or encumbrance was created before or after the execution of the beneficiary deed; and

(b) A claim for reimbursement of federal or state benefits by the Department of Human Services from the estate of the grantor or the interest acquired by a grantee of the beneficiary deed under § 20-76-436.

(ii) No legal or equitable interest shall vest in the grantee until the death of the owner prior to revocation of the beneficiary deed.

(2)(A) The owner may designate multiple grantees under a beneficiary deed.

(B) Multiple grantees may be joint tenants with right of survivorship, tenants in common, holders of a tenancy by the entirety, or any other tenancy that is otherwise valid under the laws of this state.

(3)(A) The owner may designate one (1) or more successor grantees, including one (1) or more unnamed heirs of the original grantee or grantees, under a beneficiary deed.

(B) The condition upon which the interest of a successor grantee vests, such as the failure of the original grantee to survive the grantor, shall be included in the beneficiary deed.

(b)(1) If real property is owned as a tenancy by the entirety or as a joint tenancy with the right of survivorship, a beneficiary deed that conveys an interest in the real property to a grantee designated by all of the then surviving owners and that expressly states the beneficiary deed is not to take effect until the death of the last surviving owner transfers the interest to the designated grantee effective upon the death of the last surviving owner.

(2)(A) If a beneficiary deed is executed by fewer than all of the owners of real property owned as a tenancy by the entirety or as joint tenants with right of survivorship, the beneficiary deed is valid if the last surviving owner is a person who executed the beneficiary deed.

(B) If the last surviving owner did not execute the beneficiary deed, the beneficiary deed is invalid.

(c)(1) A beneficiary deed is valid only if the beneficiary deed is recorded before the death of the owner or the last surviving owner as provided by law in the office of the county recorder of the county in which the real property is located.

(2) A beneficiary deed may be used to transfer an interest in real property to a trustee of a trust estate even if the trust is revocable and may include one (1) or more unnamed successor trustees as successor grantees.

(d)(1) A beneficiary deed may be revoked at any time by the owner or, if there is more than one (1) owner, by any of the owners who executed the beneficiary deed.

(2) To be effective, the revocation shall be:

(A) Executed before the death of the owner who executes the revocation; and

(B) Recorded in the office of the county recorder of the county in which the real property is located before the death of the owner as provided by law.

(3) If the revocation is not executed by all the owners, the revocation is not effective unless executed by the last surviving owner and recorded before the death of the last surviving owner.

(4) A beneficiary deed that complies with this section may not be revoked, altered, or amended by the provisions of the owner's will.

(e) If an owner executes more than one (1) beneficiary deed concerning the same real property, the recorded beneficiary deed that is last signed before the owner's death is the effective beneficiary deed, regardless of the sequence of recording.

(f)(1) This section does not prohibit other methods of conveying real property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner.

(2) This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

(g) A beneficiary deed is sufficient if it complies with other applicable laws and if it is in substantially the following form:

"Beneficiary Deed

CAUTION: THIS DEED MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN ORDER TO BE EFFECTIVE.

KNOW ALL PERSONS BY THESE PRESENTS THAT:

For a non-monetary, intangible consideration, of value to the Grantor, I (we) hereby convey to _____ (grantee) effective on my (our) death the following described real property:

(Legal description)

_____

(Signature of grantor(s))

(acknowledgment)."

(h) The instrument of revocation shall be sufficient if it complies with other applicable laws and is in substantially the following form:

"Revocation of Beneficiary Deed

CAUTION: THIS REVOCATION MUST BE RECORDED PRIOR TO THE DEATH OF THE GRANTOR IN ORDER TO BE EFFECTIVE.

The undersigned hereby revokes the beneficiary deed recorded on _____ (date), in docket or book _____ at page _____, or instrument number _____, records of _____ County, Arkansas.

Dated: _____

_____

Signature

(acknowledgment)."

History. Acts 2005, No. 1918, § 1; 2007, No. 243, § 1.

Amendments. The 2007 amendment rewrote the section.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Well, Now, Ain't That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

18-12-609. Marketability of real property sold at tax sales.

(a) The title to any real property located within the State of Arkansas based upon a deed resulting from a delinquent tax sale is marketable if:

(1) The tax deed has been of record for more than fifteen (15) years;

(2) Any taxes due have been paid by the tax deed grantee or the heirs or successors of the tax deed grantee for more than fifteen (15) years;

(3) No claim of adverse possession of the real property has been asserted or filed of record since the recording of the tax deed; and

(4) The taxes for which the tax deed was issued had not been paid before the tax deed was executed and delivered to the tax deed grantee.

(b) This section shall not be subject to the additional time to challenge a tax deed given to minors, persons suffering a mental incapacity, or persons serving in the United States armed forces during a time of war under § 26-37-203(b).

(c) Nothing in this section shall preclude a judicial action to quiet the title to any real property located within this state prior to the time that the title to the real property is considered marketable under subsection (a) of this section.

(d) This section shall not apply to a tax sale of a severed mineral interest.

History. Acts 2005, No. 2270, § 1.

CHAPTER 14

ARKANSAS TIME-SHARE ACT

Subchapter 4 — Protection of Purchasers

18-14-403. Statute of limitations.

CASE NOTES

Analysis

Applicability.
Action Timely.

Applicability.

Specific statute under the Time-Share Act (§ 18-14-403) controlled plaintiff time-share owners' claims against defendant developers, as opposed to the general limitations statute (§ 16-56-105); had the court adopted the developers' argument, it would have terminated the owners' right to seek relief before any injury was known to them, which was contrary to the General Assembly's intention to protect con-

sumers under the Act. Office of Child Support Enforcement v. Pyron, 363 Ark. 521, 215 S.W.3d 637 (2005).

In a class action suit against a developer seeking restitution and rescission of the owners' purchase contracts and alleging claims of misrepresentation and breach of contract, this section controlled over the general limitations statute, § 16-56-105; otherwise, the owners' right to seek relief would have terminated before any injury was known to them. Nat'l Enters., Inc. v. Kessler, 363 Ark.167, 213 S.W.3d 597 (2005).

Action Timely.

In a dispute brought by condominium owners against corporations who were successors-in-interest to the original developers, the corporations attempted to argue that the owners' constructive fraud claim was barred by the statute of limitations, however, the court found that the more specific provisions in this section controlled over the more general statute of limitations in § 16-56-105. Nat'l Enters. v. Kessler, 363 Ark. 167, 213 S.W.3d 597 (2005).

Subchapter 6 — Financing

18-14-601. Financing of time-share programs.

CASE NOTES

Successors.

In a dispute brought by condominium owners against corporations who were successors-in-interest to the original developers, the trial court did not err in ruling on the owner's cross-motion for summary judgment on the issue of liability before the class members were noticed as the corporations waived the issue of notice, and this section was quite clear that the obligations of the original developers remained in place. Nat'l Enters. v. Kessler, 363 Ark. 167, 213 S.W.3d 597 (2005).

Developer was a successor-in-interest to the initial developer, and this section adhered to the purpose of the Time-Share Act by assuring that the original developer's obligations to the owners were not abandoned. Nat'l Enters., Inc. v. Kessler, 363 Ark.167, 213 S.W.3d 597 (2005).

Summary judgment was properly awarded to a title insurance company and a title company in property owner's action for breach of a title insurance policy where the loss in real estate value as a result of purchaser's potential liability as a successor-in-interest under the Arkansas Time Share Act did not constitute a "defect" in title for purposes of title insurance. First United, Inc. v. Chicago Title Ins. Co., 366 Ark. 508, 237 S.W.3d 15 (2006).

Cited: Office of Child Support Enforcement v. Pyron, 363 Ark. 521, 215 S.W.3d 637 (2005).

CHAPTER 15

EMINENT DOMAIN

SUBCHAPTER.

3. — Municipal Corporations Generally.
5. — Electric Companies Generally.
6. — Municipal Corporations — Water and Water-Generated Electric Companies.

Subchapter 1 — General Provisions

18-15-102. Actions against corporations appropriating private property.

CASE NOTES

Illustrative Cases.

Directed verdict for a utility company was proper under subsection (b) of this section as: (1) the property owners' remedy on an inverse condemnation claim was the value of the portion of the land taken plus any damage to the remaining property; (2) the owners did not submit any evidence as to the damage to the remainder of their property, and (3) opinion evidence of the value of the entire parcel at the time of the taking was not supported by proof that the listing price was reasonable. Pope v. Overton, 2011 Ark. 11, — S.W.3d — (2011).

Subchapter 3 — Municipal Corporations Generally

SECTION.

18-15-301. Municipal corporations — Power to condemn generally.

(a) The right and power of eminent domain is conferred upon municipal corporations to enter upon, take, and condemn private property for the construction of wharves, levees, parks, squares, market places, or other lawful purposes.

(b)(1) For waterworks systems, it shall be no objection to the exercise of power that the property to be condemned is located in a different county from the municipal corporation.

(2) In addition, for electric transmission systems and electric distribution systems, it shall be no objection to the exercise of power that the property to be condemned is located outside the corporate limits of the municipal corporation or in a county other than the one wherein the municipal corporation is located.

(3) A municipal corporation shall have the power of eminent domain for its electric transmission system and electric distribution system, outside of its corporate limits without annexation of such territory, regardless of whether the territory has been allocated to an electric public utility or electric cooperative corporation, pursuant to a certificate of convenience and necessity or other authority from the Arkansas Public Service Commission, as long as the electric transmission system or electric distribution system being constructed by the municipal corporation is only for the purpose of serving customers of the municipal corporation and not for the purpose of serving electric public utility customers or electric cooperative customers at retail inside the territory allocated to an electric public utility or electric cooperative corporation pursuant to a certificate of convenience and necessity or other authority from the Arkansas Public Service Commission.

(4)(A) Before a municipal corporation exercises the power of eminent domain under this section, the municipal corporation shall provide written notice to any electric public utility or electric cooperative corporation that has received a certificate of convenience and necessity or other authority from the Arkansas Public Service Commission to serve retail customers in any area in which the power of eminent domain is to be exercised.

(B)(i) The municipal corporation shall also file a copy of the written notice required under subdivision (b)(4)(A) with the Arkansas Public Service Commission.

(ii) The notice shall contain information regarding the facilities to be constructed by the municipal corporation in conjunction with the exercise of eminent domain, including without limitation routing, size, and voltage, in sufficient detail to reasonably allow the electric public utility or electric cooperative corporation to fully evaluate the impact of the facilities on public safety, reliability of the system of the electric public utility or electric distribution cooperative, or future system expansion plans of the electric public utility or electric cooperative corporation.

(C)(i) A municipal corporation shall not exercise the power of eminent domain under this section without obtaining a certificate of convenience and necessity from the Arkansas Public Service Commission if the electric public utility or electric cooperative corporation notifies the municipal corporation in writing within forty-five (45) days of its receipt of such notice that the exercise of the power of eminent domain would specifically endanger public safety, negatively impact reliability, or conflict with future construction plans of the electric public utility or electric cooperative corporation.

(ii)*(a)* The written notice shall be in sufficient detail to reasonably allow the municipal corporation to fully evaluate the problems identified.

(b) In such event, the municipal corporation may seek from the Arkansas Public Service Commission, in accordance with law, a certificate of convenience and necessity and exercise the power of eminent domain as may be required by the municipal corporation.

(c)(1) It shall be no objection to the exercise of power that the property to be condemned is a cemetery, if the purpose for which the cemetery is being taken is for an impounding lake for a supply of water or to supplement a supply of water for the waterworks system of the municipality, including land occupied by the cemetery adjacent to the impounding lake taken to prevent pollution of the supply or for an impounding dam to create the impounding lake.

(2) The power of a municipality to condemn a cemetery for those purposes shall extend to all cemeteries except those owned by the United States of America, the State of Arkansas, a county of the State of Arkansas, or a municipality of the State of Arkansas.

(d)(1) In case of water pipelines, electric transmission facilities, or electric distribution facilities, a right-of-way or easement therefor may

be condemned, and rights-of-way and easements for the pipelines, electric transmission facilities, or electric distribution facilities may be condemned along and under railroad rights-of-way, if the ordinary use of the railroad rights-of-way are not obstructed thereby.

(2) The water pipelines, electric transmission facilities, or electric distribution facilities may be constructed and maintained across and under lands and waters of the state, but the ordinary use of the lands and waters shall not be unduly obstructed thereby.

(3)(A) The water pipelines, electric transmission facilities, or electric distribution facilities may be constructed and maintained under, across, and along public highways, roads, streets, and alleys, but the ordinary use of the public highways, roads, streets, and alleys shall not be unduly obstructed thereby.

(B) At its own expense, the municipality constructing the water pipelines, electric transmission facilities, or electric distribution facilities shall properly backfill the trench in which the pipeline, electric transmission lines, or electric distribution lines are laid and shall restore any sidewalks, curbs, gutters, pavements, or surfacing cut or damaged by the construction or maintenance.

(e) As used in this section:

(1) "Electric distribution system", "electric distribution facilities", and "electric distribution lines" mean electric utility properties and facilities necessary for distributing electricity below sixty-nine kilovolts (69 kV) phase-to-phase to a municipal corporation's retail customers within its corporate limits or within any other area served by the municipal corporation pursuant to any grant of authority by the Arkansas Public Service Commission or any other contiguous municipal corporation pursuant to a franchise agreement or other grant of authority for retail electric service;

(2) "Electric transmission system or systems", "electric transmission facilities", and "electric transmission lines" mean electric utility properties and facilities necessary for transmitting electricity at sixty-nine kilovolts (69 kV) phase-to-phase or higher and not for service to a directly tapped, retail, end-use customer or customers or any wholesale customer or customers except municipal corporations. Any electric utility properties and facilities necessary for transmitting electricity at sixty-nine kilovolts (69 kV) phase-to-phase or higher constructed on lands acquired in whole or in part by the municipal corporation utilizing the power of eminent domain granted in this section may be connected only with the following defined entities for the life of the properties and facilities and no others:

(A) The municipal corporation's electric generation or transmission or distribution system;

(B) Any electric utility or an independent transmission system operator, independent transmission company, independent regional transmission group, or other independent transmission entity operating transmission facilities in this state; and

(C) The electric generation or transmission or distribution system owned by other municipal corporations owning an electric system;

(3) "Municipal corporations" includes consolidated municipal utility improvement districts owning an electric system; and

(4) "Or other lawful purposes" includes a waterworks system, an electric transmission system, or an electric distribution system in its entirety or any integral part thereof or any extension, addition, betterment, or improvement to an existing waterworks system, an electric transmission system, or an electric distribution system owned or operated by a municipal corporation.

History. Acts 1875, No. 1, § 74, p. 1; C. & M. Dig., § 4009; Acts 1935, No. 155, § 1; Pope's Dig., § 5011; Acts 1953, No. 201, § 1; 1955, No. 53, § 1; A.S.A. 1947, § 35-902; Acts 2001, No. 1795, § 1; 2003, No. 366, § 4; 2009, No. 418, § 1; 2011, No. 271, §§ 2, 3.

Amendments. The 2009 amendment, inserted "or an electric distribution" twice in (a)(2); in (b), inserted "systems and electric distribution" in (b)(2), and inserted (b)(3) and (b)(4); in (d), inserted "or electric distribution facilities" in five places, and inserted "lines, or electric distribution" in (d)(3)(B); in (e)(2), inserted "'electric distribution facilites'", and "'electric distribution lines'" and substituted "contiguous municipal corporation pursuant to a franchise agreement or other grant of authority for retail electric service" for "municipality"; deleted (f) and redesignated the subsequent subsection accordingly; and made related and minor stylistic changes.

The 2011 amendment deleted (a)(2); deleted (e)(1) and redesignated (e)(2) as (e)(1); deleted "As used in this subsection" at the beginning of present (e)(1); added present (e)(2); redesignated (f) as (e)(3); deleted "For purposes of this section" at the beginning of present (e)(3); and added (e)(4).

RESEARCH REFERENCES

ALR. Validity of Extraterritorial Condemnation by Municipality. 44 A.L.R.6th 259.

18-15-309. Flood control improvements.

CASE NOTES

Cited: Lois Marie Combs Revocable Trust v. City of Russellville, 2011 Ark. 186, — S.W.3d — (2011).

Subchapter 4 — Municipal Corporations — Waterworks Systems

18-15-401. Right to acquire property.

CASE NOTES

Cited: Lois Marie Combs Revocable Trust v. City of Russellville, 2011 Ark. 186, — S.W.3d — (2011).

18-15-409. Controversy.

CASE NOTES

Cited: City of Fort Smith v. Carter, 372 Ark. 93, 270 S.W.3d 822 (2008).

18-15-410. Rights of property owner upon entry by municipality.

CASE NOTES

Statute of Limitations.

Owners of land used by a city as a dump did not have a viable cause of action against the city for inverse condemnation because the seven-year statute of limitations under § 16-61-101 had expired, the city's use of the land as a dump since the 1950s showed an intent to possess adversely, and no action had been filed previously. Daniel v. City of Ashdown, 94 Ark. App. 446, 232 S.W.3d 511 (2006).

Subchapter 5 — Electric Companies Generally

18-15-503. Powers.

(a)(1)(A) Any electric utility organized or domesticated under the laws of this state for the purpose of generating, transmitting, distributing, or supplying electricity to or for the public for compensation or for public use may construct, operate, and maintain such lines of wire, cables, poles, or other structures necessary for the transmission or distribution of electricity and broadband services:

(i) Along and over the public highways and the streets of the cities and towns of the state;

(ii) Across or under the waters of the state;

(iii) Over any lands or public works belonging to the state;

(iv) On and over the lands of private individuals or other persons;

(v) Upon, along, and parallel to any railroad or turnpike of the state; and

(vi) On and over the bridges, trestles, and structures of railroads.

(B) In constructing such dams as the electric utility may be authorized to construct for the purpose of generating electricity by water power, the electric utility may flow the lands above the dams with backwater resulting from construction.

(2)(A) However, the ordinary use of the public highways, streets, works, railroads, bridges, trestles, or structures and turnpikes shall not be obstructed, nor the navigation of the waters impeded, and just damages shall be paid to the owners of such lands, railroads, and turnpikes.

(B) The permission of the proper municipal authorities shall be obtained for the use of the streets.

(b)(1) In the event that an electric utility, upon application to the individual, railroad, turnpike company, or other persons, should fail to secure by consent, contract, or agreement, a right-of-way for the purposes enumerated in subsection (a) of this section, then the electric utility shall have the right to proceed to procure the condemnation of the property, lands, rights, privileges, and easements in the manner prescribed in this subchapter.

(2) However, no electric utility shall be required to secure by consent, contract, or agreement or to procure by condemnation the right to provide broadband services over its own lines of wire, cables, poles, or other structures that are in service at the time that the electric utility provides broadband services over the lines of wire, cables, poles, or other structures.

(c) Whenever an electric utility desires to construct its line on or along the lands of individuals or other persons or on the right-of-way and the structures of any railroad or upon and along any turnpike, the electric utility, by its agent, shall have the right to enter peacefully upon the lands, structures, or right-of-way and survey, locate, and lay out its line thereon, being liable, however, for any damage that may result by reason of the acts.

History. Acts 1907, No. 120, §§ 1-3, p. 303; C. & M. Dig., §§ 4043-4045; Pope's Dig., §§ 5045-5047; A.S.A. 1947, §§ 35-301 — 35-303; Acts 2001, No. 1291, § 3; 2007, No. 739, § 3.

Amendments. The 2007 amendment added "and broadband services" at the end of (a)(1)(A); and added (b)(2) and made a related change.

18-15-504. Petition for assessment of damages.

(a) If any electric utility, having surveyed and located its line under the power conferred by this section, §§ 18-15-501 — 18-15-503, and §§ 18-15-505 — 18-15-509, fails to obtain, by agreement with the owner of the property through which the line may be located, the right-of-way over the property, it may apply by petition to the circuit court of the county in which the property is situated to have the damages for the right-of-way assessed, giving the owner of the property at least ten (10) days' notice in writing by certified mail, return receipt requested, of the time and place where the petition will be heard.

(b) In case property sought to be condemned is located in more than one (1) county, the petition may be filed in the circuit court of any county in which the whole or a part of the property may be located, and proceedings had therein will apply to all property designated in the petition.

(c) If the owners of the property are nonresidents of the state, infants, or persons of unsound mind, the notice shall be given as follows:

(1)(A) By publication in any newspaper in the county which is authorized by law to publish legal notices.

(B) The notices shall be published for the same length of time as may be required in other civil causes;

(2) If there is no such newspaper published in the county, then the publication shall be made in some newspaper designated by the circuit clerk and one (1) written or printed notice thereof posted on the door of the courthouse of the county; and

(3) In writing by certified mail, return receipt requested, to the address of the owners of the property as it appears on the records in the office of the county sheriff or county tax assessor for the mailing of statements of taxes, as provided in § 26-35-705.

(d) As nearly as may be, the petition shall describe the lands over which the right-of-way is located and for which damages are asked to be assessed, whether improved or unimproved, and be sworn to.

(e)(1) No electric utility shall be required to petition a court in order to provide broadband services over its own lines of wire, cables, poles, or other structures that are in service at the time that the electric utility provides broadband services over the lines of wire, cables, poles, or other structures.

(2) An owner of property upon which an electric utility's lines of wire, cables, poles, or other structures are located may petition the circuit court of the county in which the property is situated for any compensation to which it might be entitled under this subchapter.

History. Acts 1907, No. 120, §§ 5-7, 9, p. 303; C. & M. Dig., §§ 4047-4049, 4051; Pope's Dig., §§ 5049-5051, 5053; A.S.A. 1947, §§ 35-305 — 35-307, 35-309; Acts 1999, No. 1236, § 1; 2001, No. 1291, § 4; 2007, No. 739, § 4.

Amendments. The 2007 amendment added (e).

18-15-507. Damages.

(a)(1) The amount of damages to be paid the owner of the lands for the right-of-way for the use of the electric utility shall be determined and assessed irrespective of any other benefit that the owner may receive from any improvement proposed by the electric utility.

(2)(A) If an owner of property petitions a court under § 18-15-504(e), the amount of damages, if any, payable to the owner for the use of preexisting lines of wire, cables, poles, or other structures by an electric utility to provide broadband services shall be limited to an amount sufficient to compensate the property owner for the increased interference, if any, with the owner's use of the property caused by any new or additional physical attachments to the preexisting facility for the purpose of providing broadband services.

(B) Evidence of revenues or profits derived by an electric utility from providing broadband services is not admissible for any purpose in a proceeding under § 18-15-504(e).

(b) In all cases in which damages for the right-of-way for the use of the electric utility shall have been assessed in the manner provided, it shall be the duty of the electric utility to deposit with the court or pay to the owners the amount so assessed and pay such costs as may in the discretion of the court be adjudged against it within thirty (30) days

after the assessment. Whereupon, it shall and may be lawful for the electric utility to enter upon, use, and have the right-of-way over the lands forever.

(c) In all cases in which the electric utility shall not pay or deposit the amount of damages assessed pursuant to this section, §§ 18-15-501 — 18-15-506, § 18-15-508, and § 18-15-509 within thirty (30) days after the assessment, the electric utility shall forfeit all rights in the premises.

History. Acts 1907, No. 120, §§ 11, 12, 15, p. 303; C. & M. Dig., §§ 4052, 4053, 4056; Pope's Dig., §§ 5054, 5055, 5058; A.S.A. 1947, §§ 35-311, 35-312, 35-315; Acts 2001, No. 1291, § 6; 2007, No. 739, § 5.

Amendments. The 2007 amendment added (a)(2) and made a related change.

Subchapter 6 — Municipal Corporations — Water and Water-Generated Electric Companies

18-15-605. Damages — Deposits.

CASE NOTES

Attorney's Fees.

Award of fees as sanctions was reversed because oral representations could not be the basis for sanctions underArk. R. Civ. P. 11; further, in light of the uncertainty in the statutes, the trial court erred in finding that subsection (b) of this section was inapplicable. City of Fort Smith v. Carter, 364 Ark. 100, 216 S.W.3d 594 (2005).

Mortgagees, who were awarded compensation by a jury after eminent domain proceedings were instituted by a city, were not entitled to attorney fees because the mortgagees had no right of possession in the condemned land. City of Fort Smith v. Carter, 372 Ark. 93, 270 S.W.3d 822 (2008).

In a condemnation action, the property owners incurred expenses in successfully defending the appeal. To place them in the same position they were in prior to the taking by the water district, the appellate court granted their request for attorney's fees and costs that were incurred during their defending of the appeal pursuant to subsection (b) of this section. Beaver Water Dist. v. Garner, 102 Ark. App. 188, 283 S.W.3d 595 (2008).

Although drainage was part of the purpose of a city's condemnation, improvement of drainage ancillary to improvement of a public road did not involve the city's exercise of eminent domain relating to waterworks. Therefore, subsection (b) of this section did not apply, and the landowner was not entitled to attorney's fees. Lois Marie Combs Revocable Trust v. City of Russellville, 2011 Ark. 186, — S.W.3d — (2011).

18-15-607. Tapping of mains and supply pipes, nuisance, and pollution prohibited.

A person shall be guilty of a violation and fined for each and every offense in any sum not exceeding one thousand dollars ($1,000) if the person shall:

(1) Tap the main or supply pipe of any water plant or company without first obtaining the permission of the proper city authorities, corporation, or owner of the water plant;

(2) Commit nuisance in or near the impounding dam or reservoir of any water plant; or

(3) Pollute the water or affect its wholesome qualities.

History. Acts 1895, No. 126, § 7, p. 183; C. & M. Dig., § 4040; Pope's Dig., § 5042; A.S.A. 1947, § 35-407; Acts 1997, No. 315, § 1; 2005, No. 1994, § 93.

CHAPTER 16

LANDLORD AND TENANT

SUBCHAPTER.

1. — General Provisions.
2. — Actions Against Tenants.
3. — Security Deposits.
4. — Self-Service Storage Facilities.
5. — Tenant Liability — Eviction.

A.C.R.C. Notes. Acts 2011, No. 1198, § 1, provided: "Non-Legislative Commission on the Study of Landlord-Tenant Laws

"(a) The Non-Legislative Commission on the Study of Landlord-Tenant Laws is created.

"(b) The commission shall consist of the following non-legislative members:

"(1) One (1) member appointed by the Governor;

"(2) One (1) member appointed by the President Pro Tempore of the Senate;

"(3) One (1) member appointed by the Speaker of the House of Representatives;

"(4) The Dean of the University of Arkansas at Little Rock William H. Bowen School of Law or his or her designee;

"(5) The Dean of the University of Arkansas at Fayetteville School of Law or his or her designee;

"(6) One (1) member of the Arkansas Realtors Association designated by the Arkansas Realtors Association;

"(7) One (1) member of the Arkansas Bankers Association designated by the Arkansas Bankers Association;

"(8) One (1) member of the Arkansas Bar Association designated by the Arkansas Bar Association;

"(9) One (1) member of the Arkansas Landlord's Association designated by the Arkansas Landlord's Association; and

"(10) One (1) member of the Affordable Housing Association of Arkansas designated by the Affordable Housing Association of Arkansas.

"(c) A vacancy on the commission shall be filled by the appointing authority for the unexpired portion of the term in which it occurs.

"(d)(1) The Governor shall designate his or her appointee to the commission to:

"(A) Call the first meeting of the commission; and

"(B) Serve as chair.

"(2) At the first meeting, the members of the commission shall elect from its membership a vice chair.

"(3) The commission shall conduct its meetings in Pulaski County at the State Capitol or via teleconference or web conference as technology becomes available and as desired to allow for scheduling flexibility for its members.

"(4) The commission shall meet at least quarterly or as decided upon by the commission.

"(e) A majority of the members of the commission shall constitute a quorum for transacting business of the commission.

"(f) The members of the commission shall not be entitled to compensation for their services or expense reimbursement.

"(g) The commission shall study, review, and report on the landlord-tenant laws in Arkansas and other states.

"(h) The commission shall report by December 31, 2012, to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives the results of its findings and activities and any of its recommendations."

Subchapter 1 — General Provisions

Effective Dates. Acts 2009, No. 815, § 3: Apr. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the traditional deadline for notice of the termination of a lease for the next crop year is June 30; that farmers operating under an oral lease are currently vulnerable to a demand for the surrender of their land; that the certainty of a farm lease of lands is necessary before the purchase of seed, fertilizer, equipment replacement, determination of the amount of a production loan, and advanced planning required for farming operations; and that this act will provide the necessary certainty to permit efficient farming operations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Recent Development: Landlord Tenant, 58 Ark. L. Rev. 753.

18-16-101. Failure to pay rent — Refusal to vacate upon notice — Penalty.

RESEARCH REFERENCES

Ark. L. Notes. Goforth, Arkansas Code § 18-16-101: A Challenge to the Constitutionality and Desirability of Arkansas' Criminal Eviction Statute, 2003 Arkansas L. Notes 21.

Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

CASE NOTES

Jury Instructions.

Trial court did not abuse its discretion in giving jury instructions on the unlawful detainer statute and the criminal possession of real property statute because the instructions were correct statements of the law since they tracked the statutory language of § 18-60-304(2) and subsection (a) and subdivision (b)(1) of this section; there was some basis in the evidence to give the instructions because the lawfulness of the respective parties' legal right to possess real property bore on the issue of punitive damages, and the evidence did not demonstrate that an unlawful detainer action or misdemeanor charges were ever filed, but it was evident that there could have been grounds for such civil or criminal proceedings given the evidence adduced at trial. Schmidt v. Stearman, 2010 Ark. App. 274, — S.W.3d — (2010).

Cited: Breshears v. State, 94 Ark. App. 192, 228 S.W.3d 508 (2006).

18-16-102, 18-16-103. [Repealed.]

Publisher's Notes. These sections, concerning lessee unlawfully collecting from subtenant, penalty and rent collection by persona representative of life tenant, were repealed by Acts 2007, No. 1004, §§ 2, 3. The sections were derived from the following sources:

18-16-102. Acts 1883, No. 21, § 1, p. 32; 1893, No. 131, § 1, p. 228; C. & M. Dig., §§ 6894-6896; Pope's Dig., §§ 8850-8852; A.S.A. 1947, §§ 50-521, 50-522.

18-16-103. Rev. Stat., ch. 88, § 1; C. & M. Dig., § 6549; Pope's Dig., § 8579; A.S.A. 1947, § 50-501.

18-16-104. [Repealed.]

Publisher's Notes. This section, concerning the penalty for enticing a renter away, was repealed by Acts 2005, No. 1994, § 560. The section was derived from Acts 1883, No. 96, § 8, p. 176; 1905, No. 298, § 1, p. 726; C. & M. Dig., § 6570; Acts 1923 (1st. Ex. Sess.), No. 34, § 1; Pope's Dig., § 8600; A.S.A. 1947, § 50-524.

18-16-105. Termination of oral lease of farmlands.

The owner of farmlands that are rented or leased under an oral rental or lease agreement may elect not to renew the oral rental or lease agreement for the following calendar year by giving written notice by certified mail to the renter or lessee on or before June 30 that the oral rental or lease agreement will not be renewed for the following calendar year.

History. Acts 2009, No. 190, § 1; 2009, No. 815, §§ 1, 2.

Publisher's Notes. Former § 18-16-105, concerning termination of oral lease of farmlands, was repealed by Acts 2007, No. 1004, § 4. The section was derived from the following sources: Acts 1981, No. 866, § 1; A.S.A. 1947, § 50-531.

18-16-106, 18-16-107. [Repealed.]

Publisher's Notes. These sections, concerning holding over after termination of term, and failure to quit after notice of intention, were repealed by Acts 2007, No. 1004, §§ 5-6. The sections were derived from the following sources:

18-16-106. Rev. Stat., ch. 88, §§ 9, 10; C. & M. Dig., §§ 6557, 6558; Pope's Dig., §§ 8587, 8588; A.S.A. 1947, §§ 50-509, 50-510.

18-16-107. Rev. Stat., ch. 88, §§ 7, 8; C. & M. Dig., §§ 6555, 6556; Pope's Dig.,

§§ 8585, 8586; A.S.A. 1947, §§ 50-507, 50-508.

18-16-108. Property left on premises after termination of lease.

CASE NOTES

Analysis

Applicability.
Abandonded Property.

Applicability.

Finding against the appellant property owner in his conversion claim was improper, in part because there was no finding that appellant abandoned his personalty. Section 18-16-108 was inapplicable because, even if an oral lease existed, the appellee property owner was not a "lessor" whom the statute permitted to dispose of a tenant's property; if there was a lessor, it was appellee's son, and there was no evidence that, in taking dominion over the personalty, appellee was acting on his son's behalf. Schmidt v. Stearman, 98 Ark. App. 167, 253 S.W.3d 35 (2007), review denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 423 (May 10, 2007).

Abandonded Property.

Trial court did not err in finding that appellant abandoned the property it left on premises after being afforded ample opportunity to accomplish its removal; with the termination of appellant's right as a lessee in a tenancy at will to remain on the property after the trial court ordered the issuance of a writ of possession, any property left behind was abandoned. Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc., 370 Ark. 220, 258 S.W.3d 374 (2007).

18-16-110. Landlord's liability arising from alleged defects or disrepair of premises.

No landlord or agent or employee of a landlord shall be liable to a tenant or a tenant's licensee or invitee for death, personal injury, or property damage proximately caused by any defect or disrepair on the premises absent the landlord's:

(1) Agreement supported by consideration or assumption by conduct of a duty to undertake an obligation to maintain or repair the leased premises; and

(2) Failure to perform the agreement or assumed duty in a reasonable manner.

History. Acts 2005, No. 928, § 2.

A.C.R.C. Notes. Acts 2005, No. 928, § 1 provided: "(a) The General Assembly finds that the Arkansas Supreme Court has requested its guidance regarding the law pertaining to a landlord's liability to tenants and tenants' licensees and invitees for death, injuries, or property damage suffered on the leased premises that are proximately caused by defects or disrepair on the premises.

"(b) As the Supreme Court recognized in Thomas v. Stewart, 347 Ark. 33, 60 S.W.3d 415 (2001) and Probst v. McNeill, 326 Ark. 623, 932 S.W.2d 766 (1996), for more than a century, Arkansas law has adhered to the common law principle under which a landlord has no liability to a tenant or tenant's guests absent the landlord's:

"(1) Agreement supported by consideration or assumption by conduct of a duty to undertake repair and maintenance; and

"(2) Failure to perform the agreement or assumed duty in a reasonable manner.

"(c)(1) The General Assembly further finds that the Supreme Court has properly and correctly interpreted and applied the law and that existing law should not

be altered or extended.

"(2) The purpose and intent of Section 2 of this act is to codify this rule of law as it exists under Arkansas common law."

RESEARCH REFERENCES

Ark. L. Notes. Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

Ark. L. Rev. Comment, Is Home Where Arkansas's Heart Is?: State Adopts Unique Statutory Approach to Landlord Tort Liability and Maintains Common Law "Caveat Lessee," 59 Ark. L. Rev. 737.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Property Law, 28 U. Ark. Little Rock L. Rev. 385.

18-16-111. Manufactured homes and mobile homes on leased land.

(a) As used in this section:

(1) "Lessee" means the person or persons leasing the property, site, or lot where a manufactured home or mobile home is located;

(2) "Lessor" means the owner or manager of the property, site, or lot where a manufactured home or mobile home is located; and

(3) "Unoccupied" means that a manufactured home or mobile home has ceased to be a customary place of habitation or abode and no person is living or residing in it.

(b)(1) When a manufactured home or mobile home on a leased site is unoccupied and the lease or rental payment for the leased site where the mobile home or manufactured home is located is sixty (60) days or more past due, the lessor shall notify the lessee and the lienholder, if the lienholder is not the lessee or occupant of the manufactured home or mobile home, that the manufactured home or mobile home is unoccupied and that the lease or rental payment is past due.

(2) The notice shall be in writing and delivered by certified mail and shall include the following information if known or readily available to the lessor:

(A) The lessor's name and mailing address;

(B) The lessee's name and last known mailing address;

(C) The lienholder's name and mailing address;

(D) The street address or physical location of the manufactured home or mobile home;

(E) The monthly lease payment amount;

(F) The serial number of the manufactured home or mobile home; and

(G) A description of the manufactured home or mobile home, including the make, model, year, dimensions, and any identification numbers or marks.

(3) In the notice required in subdivision (b)(1) of this section, the lessor shall notify the lienholder that unless the manufactured home or mobile home is removed from the leased site within thirty (30) days from the date the lienholder receives the notice, the manufactured home or mobile home shall be subject to a lien in favor of the lessor for

the payment of all lease or rental payments accruing from the date the lienholder received the notice.

(c)(1) Unless the lienholder is prevented by law from removing the manufactured home or mobile home, the lienholder has thirty (30) days to remove the manufactured home or mobile home before the lienholder shall be held responsible for lease or rental payments accruing from the date the lienholder received the notice.

(2) If the lienholder fails to remove the manufactured home or mobile home within thirty (30) days, the manufactured home or mobile home shall be subject to a lien in favor of the lessor for the payment of all lease or rental payments beginning on the date that the notice is received by the lienholder in an amount equal to the monthly lease or rental payments contained in the notice.

(d) Nothing in this section shall obligate the lienholder for any lease or rental payments owed while the lessee occupied the manufactured home or mobile home or any other lease or rental payments due prior to the notification of the lienholder, as required by subsection (b) of this section.

(e) Nothing in this section shall prevent the lessor from holding the lessee responsible for any unpaid lease or rental payments.

History. Acts 2005, No. 2228, § 1.

18-16-112. Protection for victims of domestic abuse.

(a) As used in this section:

(1) "Documented incident of domestic abuse" means evidence of domestic abuse contained in an order of a court of competent jurisdiction;

(2) "Domestic abuse" means:

(A) The infliction of physical injury or the creation of a reasonable fear that physical injury or harm will be inflicted upon a member of a household by a member or former member of the household; or

(B) The commission of a sex crime or act of stalking upon a member of a household;

(3) "Domestic abuse offender" means a person identified in a documented incident of domestic abuse as performing any act of domestic abuse;

(4) "Sex crime" includes without limitation:

(A) The following offenses:

(i) Rape, § 5-14-103;

(ii) Sexual indecency with a child, § 5-14-110;

(iii) Sexual assault in the first degree, § 5-14-124;

(iv) Sexual assault in the second degree, § 5-14-125;

(v) Sexual assault in the third degree, § 5-14-126;

(vi) Sexual assault in the fourth degree, § 5-14-127;

(vii) Incest, § 5-26-202;

(viii) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(ix) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(x) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;

(xi) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(xii) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(xiii) Promoting prostitution in the first degree, § 5-70-104;

(xiv) Indecent exposure, § 5-14-112, if a felony level offense;

(xv) Exposing another person to human immunodeficiency virus when a person who has tested positive for human immunodeficiency virus was ordered by the sentencing court to register as a sex offender, § 5-14-123;

(xvi) Kidnapping pursuant to § 5-11-102(a) when the victim is a minor and the offender is not the parent of the victim;

(xvii) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the victim is a minor and the offender is not the parent of the victim;

(xviii) Permitting abuse of a minor pursuant to § 5-27-221;

(xix) Computer child pornography, § 5-27-603;

(xx) Computer exploitation of a child, § 5-27-605;

(xxi) Permanent detention or restraint when the offender is not the parent of the victim, § 5-11-106; and

(xxii) Distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child, § 5-27-602;

(B) An attempt, solicitation, or conspiracy to commit any offense enumerated in subdivision (a)(4)(A) of this section; and

(C) An adjudication of guilt for an offense of the law of another state, for a federal offense, for a tribal court offense, or for a military offense:

(i) That is similar to any offense enumerated in subdivision (a)(4)(A) of this section; or

(ii) When that adjudication of guilt requires registration under another state's sex offender registration laws;

(5) "Stalking" means following or loitering near a person with the purpose of annoying, harassing, or committing an assault or battery against the person; and

(6) "Victim of domestic abuse" means a person or a member of the person's household who is identified in a documented incident of domestic abuse within:

(A) The immediately preceding sixty (60) days; or

(B) Sixty (60) days of the termination of a residential tenancy by the person, a member of the person's household, or landlord because of domestic abuse.

(b) If a residential tenant, an applicant for a residential tenancy, or a member of the tenant or applicant's household is a victim of domestic abuse as evidenced by a documented incident of domestic abuse:

(1) With respect to the victim of domestic abuse, a landlord shall not terminate or fail to renew a residential tenancy, refuse to enter into a residential tenancy, or otherwise retaliate in the leasing of a residence because of the domestic abuse; and

(2)(A) At the residential tenant's expense and with the landlord's prior consent, a landlord or a residential tenant other than a domestic abuse offender may change the locks to the residential tenant's residence.

(B) The landlord or residential tenant shall furnish the other a copy of the new key to the residential tenant's residence immediately after changing the locks or as soon after changing the locks as possible if either the landlord or residential tenant is unavailable.

(c) Notwithstanding a conflicting provision in a domestic abuse offender's residential tenancy agreement, if a domestic abuse offender is under a court order to stay away from a co-tenant residing in the domestic abuser's offender's residence or the co-tenant's residence:

(1) The domestic abuse offender under the court order may access either residence only to the extent permitted by the court order or another court order;

(2) A landlord may refuse access by a domestic abuse offender to the residence of a victim of domestic abuse unless the domestic offender is permitted access by court order; and

(3) A landlord may pursue all available legal remedies against the domestic abuse offender including, without limitation, an action:

(A) To terminate the residential tenancy agreement of the domestic abuse offender;

(B) To evict the domestic abuse offender whether or not a residential tenancy agreement between the landlord and domestic abuse offender exists; and

(C) For damages against the domestic abuse offender:

(i) For any unpaid rent owed by the domestic abuse offender; and

(ii) Resulting from a documented incident of domestic abuse.

(d) A landlord is entitled to a court order terminating the residential tenancy agreement of a person or evicting a person, or both, under subdivision (c)(3)(A) or (B) of this section upon proof that the person is a domestic abuse offender under this section.

(e) A landlord is immune from civil liability if the landlord in good faith:

(1) Changes the locks under subdivision (b)(2) of this section; or

(2) Acts in accordance with a court order under subsection (c) of this section.

(f) A residential tenant may not waive in a residential tenancy the residential tenant's right to request law enforcement assistance or other emergency assistance.

History. Acts 2007, No. 682, § 1; 2009, No. 482, § 1.

Amendments. The 2009 amendment substituted "§ 5-27-605" for "in the first degree, § 5-27-605(a)" in (a)(4)(A)(xx); deleted (a)(4)(A)(xxiii), which read: "Computer child pornography, § 5-27-603"; deleted (a)(4)(A)(xxiv), which read:

"Computer exploitation of a child, § 5-27-605"; and made related changes.

18-16-113. Hunting and fishing rights — Leased farmland.

(a)(1) A tenant of leased or rented farmland shall have no right to hunt or fish or grant the right to hunt or fish on the farmland that he or she leases or rents unless the right to hunt or fish or to grant the right to hunt or fish is expressly granted in writing by the owner of the farmland.

(2) The right to hunt or fish or to grant the right to hunt or fish on farmland shall reside solely with the owner of the farmland.

(b) The farmland owner's right to hunt or fish on his or her farmland includes without limitation the right to:

(1) Travel by foot or by any type of vehicle or boat, and by any means on, over, across, and through the farmland, and by any roads, waterways, ditches, levies, rights of way, or easements on or appurtenant to the farmland;

(2) Move, remove, use, pump, or impound water on, upon, and about the farmland;

(3) Erect, maintain, and operate permanent or temporary structures, facilities, utilities, pumping systems, blinds, docks, decks, and other similar structures and facilities on the farmland; and

(4) Grant other persons, natural or artificial, the right, concurrently or exclusively, to engage in and undertake any manner or means of hunting or fishing on, upon, and about the farmland that is leased or rented, whether orally or in writing, and to exercise any and all of the foregoing rights attendant thereto.

History. Acts 2011, No. 869, § 1.

Subchapter 2 — Actions Against Tenants

SECTION.

18-16-201 — 18-16-205. [Repealed.]

Publisher's Notes. These sections, concerning ejectment for nonpayment of rent, duty of tenant to notify landlord, actions for use and occupation, remedy when lease for life, and recovery of rent in arrears due decedent, were repealed by Acts 2007, No. 1004, §§ 7-11. The sections were derived from the following sources:

18-16-201. Rev. Stat., ch. 88, §§ 15-21; C. & M. Dig., §§ 6562-6568; Pope's Dig., §§ 8592-8598; A.S.A. 1947, §§ 50-514 – 50-520.

18-16-202. Rev. Stat., ch. 88, § 6; C. & M. Dig., § 6554; Pope's Dig., § 8584; A.S.A. 1947, § 50-506.

18-16-203. Rev. Stat., ch. 88, §§ 11-13; C. & M. Dig., §§ 6559-6561; Pope's Dig., §§ 8589-8591; A.S.A. 1947, §§ 50-511 – 50-513.

18-16-204. Rev. Stat., ch. 88, § 4; C. & M. Dig., § 6552; Pope's Dig., § 8582; A.S.A. 1947, § 50-504.

18-16-205. Rev. Stat., ch. 88, §§ 2, 3, 5; C. & M. Dig., §§ 6550, 6551, 6553; Pope's Dig., §§ 8580, 8581, 8583; A.S.A. 1947, §§ 50-502, 50-503, 50-505.

Subchapter 3 — Security Deposits

SECTION.

18-16-305. Refund required — Exceptions.

(a)(1) Within sixty (60) days of termination of the tenancy, property or money held by the landlord as security shall be returned to the tenant.

(2) However, the money may be applied to the payment of accrued unpaid rent and any damages which the landlord has suffered by reason of the tenant's noncompliance with the rental agreement, all as itemized by the landlord in a written notice delivered to the tenant, together with the remainder of the amount due sixty (60) days after termination of the tenancy and delivery of possession by the tenant.

(b)(1) The landlord shall be deemed to have complied with subsection (a) of this section by mailing via first class mail the written notice and any payment required to the last known address of the tenant.

(2) If the letter containing the payment is returned to the landlord and if the landlord is unable to locate the tenant after reasonable effort, then the payment shall become the property of the landlord one hundred eighty (180) days from the date the payment was mailed.

History. Acts 1979, No. 531, § 3; A.S.A. 1947, § 50-527; Acts 2009, No. 559, § 1.

Amendments. The 2009 amendment substituted "sixty (60)" for "thirty (30)" in (a)(1) and (a)(2).

Subchapter 4 — Self-Service Storage Facilities

SECTION.

18-16-407. Sale procedure.

(a) Before conducting a sale under § 18-16-406, the operator shall:

(1) Notify the occupant in writing of the default. The notice shall be sent by first class mail with certificate of mailing to the occupant at the occupant's last known address, and shall include:

(A) A statement that the contents of the occupant's leased space are subject to the operator's lien;

(B) A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges that shall become due before the date of sale, and the date those additional charges shall become due;

(C) A demand for payment of the charges due within a specified time, not less than fourteen (14) days after the date that the notice was mailed;

(D) A statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place;

(E) The name, street address, and telephone number of the operator or his or her designated agent, whom the occupant may contact to respond to the notice; and

(F) Designation of the date, time, and place where the contents will be sold unless the default is remedied prior to sale;

(2) Publish one (1) advertisement in a newspaper of general circulation in the county in which the storage facility is located at least seven (7) days prior to sale; and

(3)(A) Contact the circuit clerk in the county where the personal property is stored to determine the name and address of any holder of liens or security interests in the personal property being sold.

(B)(i) The owner shall notify by first class mail with certificate of mailing each holder of a lien or security interest of the time and place of the proposed sale at least ten (10) days prior to conducting the sale.

(ii) The owner shall be required to notify the holder of a lien or security interest only if the lien or security interest is filed under the name of the occupant.

(b) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the operator's lien and redeem the occupant's personal property.

(c) The sale under this subchapter shall be held at the self-service storage facility where the personal property is stored.

(d) A purchaser in good faith of any personal property sold under this subchapter takes the property free and clear of any rights of:

(1) Persons against whom the lien was valid; and

(2) Other lienholders.

(e) If the operator complies with the provisions of this subchapter, the operator's liability:

(1) To the occupant shall be limited to the net proceeds received from the sale of the personal property; and

(2) To other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by the other liens or the amount owed to such lienholders, whichever is less.

(f) The operator shall retain a copy of all notices and return receipts required by subsection (a) of this section for six (6) months following the date of the lien sale.

History. Acts 1987, No. 576, § 4; 2011, No. 189, § 1.

Amendments. The 2011 amendment substituted "first class mail with certificate of mailing" for "certified mail, return receipt requested" in (a)(1) and (a)(3)(B)(i); and subdivided former (a)(3)(B) as present (a)(3)(B)(i) and (a)(3)(B)(ii).

18-16-409. Notices — Method of delivery.

(a) Unless otherwise specifically provided, all notices required by this subchapter shall be sent by first class mail with certificate of mailing.

(b)(1) Notices sent to the operator shall be sent to the self-service storage facility where the occupant's property is stored.

(2) Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(3) Notices shall be deemed delivered when deposited with the United States Postal Service, properly addressed as provided in § 18-16-407(a) with postage prepaid.

History. Acts 1987, No. 576, § 4; 2011, No. 189, § 2.

Amendments. The 2011 amendment substituted "first class mail with certificate of mailing" for "certified mail, return receipt requested" in (a).

Subchapter 5 — Tenant Liability — Eviction

Publisher's Notes. A former subchapter 5, concerning tenant liability and eviction, was repealed by Acts 2007, No. 1004, § 12. The subchapter was derived from the following sources:

18-16-501. Acts 2001, No. 1758, § 1.
18-16-502. Acts 2001, No. 1758, § 2.
18-16-503. Acts 2001, No. 1758, § 3.
18-16-504. Acts 2001, No. 1758, § 4.
18-16-505. Acts 2001, No. 1758, § 5.
18-16-506. Acts 2001, No. 1758, § 6.
18-16-507. Acts 2001, No. 1758, § 7.
18-16-508. Acts 2001, No. 1758, § 8.

18-16-501. Common nuisance — Criminal offense.

Any tenant who uses or allows another person to use the tenant's leased premises as a common nuisance as defined by § 5-74-109(b) or § 16-105-402 or for a criminal offense as identified in § 18-16-502 may be evicted by the prosecuting attorney of the county, the city attorney of the city, the landlord, the premises owner, or the agent for the premises owner pursuant to the provisions of this subchapter.

History. Acts 2009, No. 464, § 1.

18-16-502. Gambling — Prostitution — Alcohol.

For purposes of this subchapter, any tenant who engages in or allows another person to engage in illegal gambling under § 5-66-107, prostitution as defined by § 5-70-102, or the unlawful sale of alcohol as defined by § 3-3-205 on the tenant's leased premises shall be subject to the eviction procedures established by this subchapter.

History. Acts 2009, No. 464, § 1.

18-16-503. Complaint — Jurisdiction.

(a) The prosecuting attorney of the county, the city attorney of the city, the landlord, the premises owner, or the agent for the premises owner may file a complaint in the office of the clerk of the court for the eviction of any tenant who has used or has allowed another person to use the tenant's leased premises for use as a common nuisance as defined by § 5-74-109(b) or § 16-105-402 or for a criminal offense as identified in § 18-16-502.

(b) A civil action under this subchapter is cognizable before the:

(1) Circuit court of any county in which an act described in § 18-16-501 or § 18-16-502 is committed; and

(2) District court with jurisdiction concurrent with the jurisdiction of the circuit court if permitted by rule or order of the Supreme Court.

(c) As used in this subchapter, "court" means:

(1) A circuit court; and

(2) If permitted by rule or order of the Supreme Court, a district court.

History. Acts 2009, No. 464, § 1.

18-16-504. Form of complaint.

A complaint filed under this subchapter shall state the name of the tenant or tenants to be evicted, the location of the leased premises, and the basis for which eviction is authorized under this subchapter.

History. Acts 2009, No. 464, § 1.

18-16-505. Summons — Notice.

Upon the filing of a complaint under this subchapter, the clerk of the court shall issue a summons upon the complaint. The summons shall be in customary form directed to the sheriff of the county where the complaint is filed, with direction for service of the complaint on the named defendants. In addition, the court shall issue and direct the sheriff to serve upon the named defendants a notice in the following form:

"NOTICE OF INTENTION TO EVICT FOR CRIMINAL ACTIVITY

You are hereby notified that the attached complaint in the above-styled cause claims that you have engaged in or have allowed the property described in the above-mentioned complaint to be used for criminal activity and that the plaintiff is entitled to have you evicted pursuant to state law. If, within five (5) days, excluding Sundays and legal holidays, after the date of service of this notice you have not filed in the office of the clerk of this court a written objection to the claims made against you by the plaintiff in his or her complaint for eviction, then a writ of possession shall forthwith issue from this office directed to the sheriff of this county or to the police chief of the city ordering him or her to remove you from possession of the property described in the complaint. If you should file a written objection to the complaint of the plaintiff and the allegations for immediate possession of the property described in the complaint within five (5) days, excluding Sundays and legal holidays, after the date of service of this notice, a hearing will be scheduled by the court after you have timely answered to determine whether or not the writ of possession should issue as sought by the plaintiff.
Clerk of Court"

History.
Acts 2009, No. 464, § 1.

18-16-506. Written objection.

(a) If within five (5) days, excluding Sundays and legal holidays, following service of this summons, complaint, and notice seeking a writ of possession against the defendants named in the complaint the defendant or defendants have not filed a written objection to the claim for a writ of possession made by the plaintiff in his or her complaint, the clerk of the court shall immediately issue a writ of possession directed to the sheriff of the county or the police chief of the city commanding him or her to cause the defendant or defendants to vacate the property described in the complaint without delay, which the sheriff or police chief shall execute in the manner described in § 18-16-507.

(b)(1) If a written objection to the claim of the plaintiff for a writ of possession is filed by the defendant or defendants within five (5) days after the date of service of the notice, summons, and complaint as provided for in this section, the plaintiff shall obtain a date for the hearing of the plaintiff's demand for a writ of possession of the property described in the complaint after the defendant or defendants have timely answered the complaint.

(2)(A) If a hearing described in subdivision (b)(1) of this section is required, at the hearing the plaintiff shall present evidence sufficient to make a prima facie case of the criminal activity that has been facilitated at the property described in the complaint.

(B) The defendant or defendants shall be entitled to present evidence in rebuttal of the plaintiff's case.

(3) If the court decides upon all the evidence that the plaintiff is entitled to a writ of possession under state law, then the court shall order the clerk of the court to immediately issue a writ of possession to the sheriff of the county or the police chief of the city to evict the defendant or defendants, as provided for in § 18-16-507.

History. Acts 2009, No. 464, § 1.

18-16-507. Writ of possession.

(a) Upon receipt of a writ of possession from the clerk of the court, the sheriff or police chief shall immediately proceed to execute the writ of possession in the specific manner described in this section and, if necessary, ultimately by ejecting from the property described in the writ of possession the defendant or defendants and any other person or persons who have unlawfully received or entered into the possession of the property after the issuance of the writ of possession, and then notify the plaintiff that the property has been vacated by the defendant or defendants.

(b)(1) Upon receipt of the writ of possession, the sheriff or police chief shall notify the defendant or defendants of the issuance of the writ of possession by delivering a copy of the writ of possession to the defendant or defendants or to any person authorized to receive summons in civil cases and in like manner.

(2) If within eight (8) hours after receipt of the writ of possession the sheriff or police chief does not find any such defendant as stated in the complaint at his or her normal place of residence, the sheriff or police chief may serve the writ of possession by placing a copy conspicuously upon the front door or other structure of the property described in the complaint, which shall have like effect as if delivered in person pursuant to the terms of the writ of possession.

(c)(1)(A) If at the expiration of twenty-four (24) hours after the service of the writ of possession in the manner indicated the defendant or defendants remain in possession of the property, the sheriff or police chief shall notify the plaintiff or the plaintiff's attorney of that fact and may employ, may engage, and shall be provided with all labor and assistance required by the sheriff or police chief to obtain possession and remove the possessions and belongings of the defendant or defendants from the affected property to a place of storage in a public warehouse or in some other reasonable safe place of storage under the control of the plaintiff.

(B)(i) The defendant or defendants may recover the property stored under subdivision (c)(1)(A) within seven (7) business days.

(ii) Before recovering the property, the defendant or defendants shall pay for the reasonable cost of storage.

(2) If the defendant or defendants do not recover the property as provided in subdivision (c)(1) of this section, then the court shall order

the possessions and belongings of the defendant or defendants sold by the plaintiff in a commercially reasonable manner with the proceeds of the sale applied first to the cost of storage, second to any monetary judgment in favor of the plaintiff, and third to the defendant any excess.

(d) In executing the writ of possession, the sheriff or police chief may forcibly remove all locks or other barriers erected to prevent entry upon the premises in any manner which he or she deems appropriate or convenient and, if necessary, physically restrain the defendant or defendants from interfering with the removal of a defendant's property and possessions from the property described in the writ of possession.

(e) If the plaintiff is the city attorney or prosecuting attorney, no bond shall be required. If the plaintiff is the landlord or premises owner, no bond shall be required unless ordered by the court as a condition to the execution of a writ of possession granted prior to the date that an answer is to be filed by the defendant or defendants.

(f) The sheriff or police chief shall return the writ of possession at or before the return date of the writ of possession and shall state in his or her return the manner in which he or she executed the writ of possession and whether or not the defendant or defendants have been ejected from the property described and, if not, the reason for the failure of the sheriff or police chief to do so.

(g) As used in this section, "sheriff or police chief" includes a deputy sheriff, police officer, or other law enforcement official acting at the direction of the sheriff or police chief.

History. Acts 2009, No. 464, § 1.

18-16-508. Costs and attorney's fees — Damages.

(a)(1) A court granting relief under this subchapter may order in addition to any other costs provided by law the payment by the defendant or defendants to the plaintiff reasonable attorney's fees and the costs of the action. In such cases, multiple defendants are jointly and severally liable for any payment so ordered.

(2) Any costs or attorney's fees collected from the defendants shall be remitted to the plaintiff. If the plaintiff is the city attorney, the costs shall be remitted to the city general fund. If the plaintiff is the prosecuting attorney, the costs shall be remitted to the county general fund.

(b) A proceeding brought under this subchapter for eviction of the defendants and occupants of the premises does not preclude the owner or landlord from recovering monetary damages for rent, repairs, or any other incidental damages up to the date of eviction of the defendants and occupants from the premises in a civil action.

History. Acts 2009, No. 464, § 1.

18-16-509. Immunity from civil liability.

For any action or threatened action taken to enforce a right or remedy provided by this subchapter, a landlord, a premises owner, an agent or attorney for the premises owner, and a real estate licensee as defined in § 17-42-103(10) are immune from civil liability for the breach of an express or implied covenant concerning the possession or quiet enjoyment of the leased premises.

History. Acts 2009, No. 464, § 1.

CHAPTER 17

ARKANSAS RESIDENTIAL LANDLORD — TENANT ACT OF 2007

SUBCHAPTER.

A.C.R.C. Notes. Acts 2011, No. 1198, § 1, provided: "Non-Legislative Commission on the Study of Landlord-Tenant Laws

"(a) The Non-Legislative Commission on the Study of Landlord-Tenant Laws is created.

"(b) The commission shall consist of the following non-legislative members:

"(1) One (1) member appointed by the Governor;

"(2) One (1) member appointed by the President Pro Tempore of the Senate;

"(3) One (1) member appointed by the Speaker of the House of Representatives;

"(4) The Dean of the University of Arkansas at Little Rock William H. Bowen School of Law or his or her designee;

"(5) The Dean of the University of Arkansas at Fayetteville School of Law or his or her designee;

"(6) One (1) member of the Arkansas Realtors Association designated by the Arkansas Realtors Association;

"(7) One (1) member of the Arkansas Bankers Association designated by the Arkansas Bankers Association;

"(8) One (1) member of the Arkansas Bar Association designated by the Arkansas Bar Association;

"(9) One (1) member of the Arkansas Landlord's Association designated by the Arkansas Landlord's Association; and

"(10) One (1) member of the Affordable Housing Association of Arkansas designated by the Affordable Housing Association of Arkansas.

"(c) A vacancy on the commission shall be filled by the appointing authority for the unexpired portion of the term in which it occurs.

"(d)(1) The Governor shall designate his or her appointee to the commission to:

"(A) Call the first meeting of the commission; and

"(B) Serve as chair.

"(2) At the first meeting, the members of the commission shall elect from its membership a vice chair.

"(3) The commission shall conduct its meetings in Pulaski County at the State Capitol or via teleconference or web conference as technology becomes available and as desired to allow for scheduling flexibility for its members.

"(4) The commission shall meet at least quarterly or as decided upon by the commission.

"(e) A majority of the members of the commission shall constitute a quorum for transacting business of the commission.

"(f) The members of the commission shall not be entitled to compensation for their services or expense reimbursement.

"(g) The commission shall study, review, and report on the landlord-tenant laws in Arkansas and other states.

"(h) The commission shall report by December 31, 2012, to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives the results of its findings and activities and any of its recommendations."

Subchapter 1 — Title, Construction, Application, and Subject Matter of Chapter

18-17-101. Title.

This chapter shall be known and may be cited as the "Arkansas Residential Landlord — Tenant Act of 2007".

History. Acts 2007, No. 1004, § 1.

RESEARCH REFERENCES

Ark. L. Notes. Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

18-17-102. Purposes — Rules of construction.

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this chapter are:

(1) To simplify, clarify, modernize, and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants; and

(2) To encourage landlords and tenants to maintain and improve the quality of housing.

History. Acts 2007, No. 1004, § 1.

18-17-103. Administration of remedies — Enforcement.

(a) The remedies provided by this chapter shall be administered so that an aggrieved party may recover appropriate damages.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

History. Acts 2007, No. 1004, § 1; 2011, No. 271, § 4.

Amendments. The 2011 amendment inserted "so" in (a).

18-17-104. Settlement of disputed claim or right.

A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

History. Acts 2007, No. 1004, § 1.

Subchapter 2 — Scope and Jurisdiction

18-17-201. Territorial application.

This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History. Acts 2007, No. 1004, § 1.

18-17-202. Exclusions from application of chapter.

The following arrangements are not governed by this chapter:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his or her interest;

(3) Occupancy by a member or a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) Transient occupancy in a hotel, motel, or other accommodations subject to any sales tax on lodging;

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(7) Occupancy under a rental agreement covering the premises used by the occupant primarily for agricultural purposes; and

(8) Residence, whether temporary or not, at a public or private charitable or emergency protective shelter.

History. Acts 2007, No. 1004, § 1.

18-17-203. Jurisdiction and service of process.

The district court or appropriate court of this state shall exercise jurisdiction over any landlord with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter.

History. Acts 2007, No. 1004, § 1.

Subchapter 3 — General Definitions and Principles of Interpretation — Notice

18-17-301. General definitions.

As used in this chapter:

(1) "Action" means a recoupment, counterclaim, suit in equity, and any other proceeding in which rights are determined, including without limitation an action for possession;

(2) "Building and housing codes" means any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises or dwelling unit;

(3)(A) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household and includes landlord-owned mobile homes.

(B) Property that is leased for the exclusive purpose of being renovated by the lessee is not considered a dwelling unit within the meaning of this chapter;

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned;

(5) "Landlord" means the owner, lessor, or sublessor of the premises, and it also means a manager of the premises who fails to disclose as required by this subchapter;

(6) "Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(7)(A) "Owner" means one (1) or more persons, jointly or severally, in whom is vested all or part of:

(i) The legal title to property; or

(ii) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

(B) "Owner" includes, but is not limited to, a mortgagee in possession;

(8) "Person" means an individual or organization;

(9) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(10) "Rent" means the consideration payable for use of the premises, including late charges whether payable in lump sum or periodic payments, excluding security deposits or other charges;

(11) "Rental agreement" means all agreements, written or oral, and valid rules adopted under this subchapter embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(12) "Roomer" means a person occupying a dwelling unit:

(A) That does not include the following facilities provided by the landlord:

(i) Toilet;

(ii) Bathtub or shower;

(iii) Refrigerator;

(iv) Stove; and

(v) Kitchen sink; and

(B) Where one (1) or more of these facilities are used in common by occupants in the structure;

(13) "Security deposit" means a monetary deposit from the tenant to the landlord to secure the full and faithful performance of the terms and conditions of the rental agreement as provided in this chapter;

(14)(A) "Single family residence" means a structure maintained and used as a single dwelling unit.

(B) Notwithstanding that a dwelling unit shares one (1) or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit;

(15) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others; and

(16) "Willful" means an intentional attempt to avoid obligations under the rental agreement or the provisions of this chapter.

History. Acts 2007, No. 1004, § 1; 2009, No. 482, §§ 2, 3.

Amendments. The 2009 amendment subdivided (12); substituted "rental" for "lease" and "chapter" for "subchapter" in (13); substituted "intentional attempt" for "attempt to intentionally" in (16); and made related and minor stylistic changes.

18-17-302. Obligation of good faith.

Every duty under this chapter and every act that shall be performed as a condition precedent to the exercise of a right or remedy under this

chapter imposes an obligation of good faith in its performances or enforcement.

History. Acts 2007, No. 1004, § 1.

18-17-303. Notice.

(a)(1) A person has notice of a fact if:

(A) The person has actual knowledge of it;

(B) The person has received a notice or notification of it; or

(C) From all the facts and circumstances known to him or her at the time in question, he or she has reason to know that it exists.

(2) A person knows or has knowledge of a fact if he or she has actual knowledge of it.

(b)(1) A person notifies or gives a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it.

(2) A person receives a notice or notification when:

(A) It comes to his or her attention; or

(B) In the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication; or

(C)(i) In the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him or her as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence.

(ii) Proof of mailing pursuant to this subsection constitutes notice without proof of receipt.

(c) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to the individual's attention if the organization had exercised reasonable diligence.

(d) The time within which an act is to be done shall be computed by reference to the Arkansas Rules of Civil Procedure.

History. Acts 2007, No. 1004, § 1.

Subchapter 4 — General Provisions

SECTION.

18-17-401. Terms and conditions of rental agreement.

(a) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including, but not limited to, rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(b)(1) Rent is payable without demand or notice at the time and place agreed upon by the parties.

(2) Unless the tenant is otherwise notified in writing, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one (1) month or less and otherwise in equal monthly installments at the beginning of each month.

(c) Unless the rental agreement fixes a definite term, the tenancy is week to week in case of a roomer who pays weekly rent and in all other cases month to month.

History. Acts 2007, No. 1004, § 1.

Subchapter 5 — Landlord Obligations

SECTION.
18-17-501. Security deposits.

18-17-501. Security deposits.

Section 18-16-301 et seq. shall determine:

(1) Whether a security deposit is required under this chapter; and

(2) The rights, duties, and remedies of a landlord and tenant concerning a security deposit.

History. Acts 2007, No. 1004, § 1; 2009, No. 482, § 4; 2009, No. 559, § 2.

A.C.R.C. Notes. Pursuant to Acts 2009, No. 482, § 13, the amendment of § 18-17-501(a)(1) by Acts 2009, No. 482, § 4, is superseded by the amendment of § 18-17-501 by Acts 2009, No. 559, § 2.

Amendments. The 2009 amendment by No. 559 rewrote the section.

Subchapter 6 — Tenant Obligations

SECTION.
18-17-601. Tenant to maintain dwelling unit.
18-17-602. Access.
18-17-603. Tenant to use and occupy.

18-17-601. Tenant to maintain dwelling unit.

A tenant shall:

(1) Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(2) Keep the dwelling unit and that part of the premises that he or she uses reasonably safe and reasonably clean;

(3) Dispose from his or her dwelling unit all ashes, garbage, rubbish, and other waste in a reasonably clean and safe manner;

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant reasonably clean;

(5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators in the premises;

(6) Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant's permission or who is allowed access to the premises by the tenant;

(7) Conduct himself or herself and require other persons on the premises with the tenant's permission or who are allowed access to the premises by the tenant to conduct themselves in a manner that will not disturb other tenant's peaceful enjoyment of the premises; and

(8) Comply with the lease and rules that are enforceable pursuant to this subchapter.

History. Acts 2007, No. 1004, § 1.

18-17-602. Access.

(a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, investigate possible rule or lease violations, investigate possible criminal activity, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(b) A tenant shall not change locks on the dwelling unit without the permission of the landlord.

History. Acts 2007, No. 1004, § 1.

RESEARCH REFERENCES

Ark. L. Notes. Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

18-17-603. Tenant to use and occupy.

Unless otherwise agreed, a tenant shall occupy his or her dwelling unit only as a dwelling unit and shall not conduct or permit any illegal activities thereon.

History. Acts 2007, No. 1004, § 1.

Subchapter 7 — Landlord Remedies

18-17-701. Noncompliance with rental agreement — Failure to pay rent — Removal of evicted tenant's personal property.

(a)(1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date not less than fourteen (14) days after receipt of the notice, if the noncompliance is not remedied in fourteen (14) days.

(2) The rental agreement shall terminate as provided in the notice unless the noncompliance is remediable by repairs or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice.

(b) If rent is unpaid when due and the tenant fails to pay rent within five (5) days from the date due, the landlord may terminate the rental agreement.

(c)(1) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief, judgments, or evictions in circuit court or district court without posting bond for any noncompliance by the tenant with the rental agreement.

(2) If the tenant's noncompliance is willful other than nonpayment of rent, the landlord may recover reasonable attorney's fees, provided the landlord is represented by an attorney.

(3) If the tenant's nonpayment of rent is not in good faith, the landlord is entitled to reasonable attorney's fees, provided the landlord is represented by an attorney.

History. Acts 2007, No. 1004, § 1; 2009, No. 482, § 5.

Amendments. The 2009 amendment subdivided (a), substituted "noncompliance" for "breach" in four places, and made minor stylistic changes.

RESEARCH REFERENCES

Ark. L. Notes. Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

18-17-702. Noncompliance affecting health and safety.

(a)(1) If there is noncompliance by the tenant with § 18-17-601 materially affecting health and safety that may be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen (14) days after written notice by the landlord specifying the noncompliance and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner.

(2) The tenant shall reimburse the landlord for the cost of the work.

(3) In addition, the landlord shall have the remedies available under this chapter.

(b) If there is noncompliance by the tenant with this chapter materially affecting health and safety other than as stated in subsection (a) of this section, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen (14) days after written notice by the landlord if it is not an emergency, specifying the noncompliance and requesting that the tenant remedy within that period of time, the landlord may terminate the rental agreement.

History. Acts 2007, No. 1004, § 1; 2009, No. 482, § 6.

Amendments. The 2009 amendment subdivided (a); substituted "noncompliance" for "breach" in (a)(1) and (b); substituted "this chapter" for "this subchapter" in (b); and made related and minor punctuation changes

18-17-703. Remedy after termination.

If the rental agreement is terminated, the landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees.

History. Acts 2007, No. 1004, § 1.

18-17-704. Periodic tenancy — Holdover remedies.

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven (7) days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days before the termination date specified in the notice.

(c)(1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession.

(2) If the holdover is not in good faith, the landlord may recover reasonable attorney's fees.

(3) If the tenant's holdover is a willful violation of the provisions of this chapter or the rental agreement, the landlord may also recover an amount not more than three (3) months periodic rent or twice the actual

damages sustained by him or her, whichever is greater and reasonable attorney's fees.

(4) If the landlord consents to the tenant's continued occupancy, § 18-17-401(c) applies.

History. Acts 2007, No. 1004, § 1.

18-17-705. Landlord and tenant remedies for abuse of access.

(a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief in district court without posting bond to compel access, or terminate the rental agreement.

(b) In either case the landlord may recover actual damages and reasonable attorney's fees.

History. Acts 2007, No. 1004, § 1.

RESEARCH REFERENCES

Ark. L. Notes. Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

18-17-706. Payment of rent into court.

In any action in which the landlord sues for possession and the tenant raises defenses or counterclaims under this chapter or the rental agreement:

(1)(A)(i) The tenant shall pay the landlord all rent that becomes due after the issuance of a written order requiring the tenant to vacate or show cause as rent becomes due.

(ii) The landlord shall provide the tenant with a written receipt for each payment except when the tenant pays by check.

(B) Rent shall not be abated for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his or her family, or other person on the premises with his or her permission or who is allowed access to the premises by the tenant;

(2) The tenant shall pay the landlord all rent allegedly owed before the issuance of the order, provided that in lieu of the payment the tenant may be allowed to submit to the court a receipt or cancelled check, or both, indicating that payment has been made to the landlord;

(3)(A) Should the tenant not appear and show cause within ten (10) days, the court shall issue a writ of possession under this subchapter.

(B)(i) Should the tenant appear in response to the order and allege that rent due under subdivision (1) or (2) of this section has been paid, the court shall determine the issue.

(ii) If the tenant has failed to comply with subdivision (1) or (2) of this section, the court shall issue a writ of possession and the landlord shall be placed in full possession of the premises by the sheriff; and

(4)(A) If the amount of rent due is found at final adjudication to be less than alleged by the landlord, judgment shall be entered for the amount found due to the landlord.

(B) If the court finds at final adjudication that no rent is due and no damages are due the landlord, judgment shall be entered for the tenant.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 1; 2009, No. 482, § 7.

Amendments. The 2009 amendment by No. 311 inserted (1)(A)(ii) and (4)(B) and redesignated the remaining subdivisions accordingly; substituted "order" for "rule" in (1)(A)(i), (2), and (3)(B)(i); substituted "writ of possession" for "warrant of ejectment" in (3)(A) and (3)(B)(ii); deleted "deputy, or constable" following "sheriff" in (3)(B)(ii); substituted "amount found due to the landlord" for "tenant if he or she has complied fully with the provisions of this section" in (4)(A); and made related and minor stylistic changes.

The 2009 amendment by No. 482 substituted "order" for "rule" in (1)(A), (2), (3)(A) and (3)(B)(i); and made minor stylistic changes throughout.

18-17-707. Bond on appeal and order staying execution.

(a) Upon appeal to the circuit court, the case shall be heard in a manner consistent with the rules of the circuit court as soon as is feasible after the appeal is docketed.

(b)(1) It is sufficient to stay execution of a judgment for possession that the tenant sign a bond that he or she will pay to the landlord the amount of rent, determined by the court in accordance with §§ 18-17-705 and 18-17-706, as it becomes due periodically after the judgment was entered.

(2) Any circuit judge shall order a stay of execution upon the bond.

(c) The bond by the tenant and the order staying execution may be substantially in the following form:

"State of Arkansas County of _____
_____ Landlord
vs.
_____ Tenant
Bond to Stay
Execution on Appeal to Circuit Court
Now comes the tenant in the above entitled action and respectfully shows the court that a writ of possession was issued against the tenant and for the landlord on the ____ day of _____, 20____, by the district court. Tenant has appealed the judgment.
Pursuant to the findings of the district court, the tenant is obligated to pay rent in the amount of $_____ per ____, due on the ____ day of each _____.
Tenant bonds to pay the periodic rent hereinafter due according to the findings of the court and moves the circuit court to stay execution on the writ of possession until this matter is heard on appeal and decided by the circuit court.
This the ____ day of _____, 20____
_____Tenant

Upon execution of the bond, execution on the judgment of eviction is stayed until the action is heard on appeal and decided by the circuit court. If tenant fails to make any rental payment within five (5) days of the due date, upon application of the landlord, the stay of execution shall dissolve, the appeal by the tenant to the circuit court on issues dealing with possession shall be dismissed and the sheriff shall dispossess the tenant.

This the ____ day of _____, 20____

_____Judge"

(d) If the tenant fails to make a payment within five (5) days of the due date according to the bond and order staying execution, the clerk, upon application of the landlord, shall issue a writ of possession to be executed pursuant to § 18-17-904.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 2.

Amendments. The 2009 amendment substituted "bond" for "undertaking" in four places; substituted "possession" for "ejectment" in (b)(1), and for "eviction" in three places; substituted "the rules of the" for "other appeals from the" in (a); in (b), inserted "and 18-17-706" in (b)(1), and deleted "clerk or" following "Any" in (b)(2); substituted "district" for "circuit" in the first and second paragraphs of the form to stay execution in (c); deleted (e); and made related and minor stylistic changes.

Subchapter 8 — Miscellaneous

SECTION.

18-17-801. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this chapter that may be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History. Acts 2007, No. 1004, § 1.

18-17-802. Prior transactions.

Transactions entered into before July 31, 2007, and not extended or renewed on or after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the repeal or amendment had not occurred.

History. Acts 2007, No. 1004, § 1.

Subchapter 9 — Eviction Proceedings

18-17-901. Grounds for eviction of tenant.

(a) A landlord or his or her agent may commence eviction proceedings against a tenant in a district court having jurisdiction over the eviction proceeding, when:

(1) The tenant fails or refuses to pay the rent when due or when demanded;

(2) The term of tenancy or occupancy has ended; or

(3) The terms or conditions of the rental agreement have been violated.

(b) For residential rental agreements, nonpayment of rent within five (5) days of the date due constitutes legal notice to the tenant that the landlord has the right to begin eviction proceedings under this chapter.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 3; 2009, No. 482, § 8.

Amendments. The 2009 amendment by No. 311 inserted "in a district court having jurisdiction over the eviction proceeding" in (a), and made related and minor stylistic changes.

The 2009 amendment by No. 482 substituted "rental agreement" for "lease" in (a)(3).

RESEARCH REFERENCES

Ark. L. Notes. Prettyman, The Landlord Protection Act, Arkansas Code § 18-17-101 et seq., 2008 Ark. L. Notes 71.

18-17-902. Eviction proceeding.

(a)(1)(A) When grounds exist for eviction of a tenant under this subchapter, a landlord or his or her agent may commence an action for eviction by filing with a district court having jurisdiction a complaint and supporting affidavit of eviction that specifies the grounds for the eviction.

(B) The supporting affidavit shall be signed by a person with personal knowledge of the grounds for eviction.

(2) The fee for filing an action under this chapter by a complaint with supporting affidavit of eviction shall be as provided in § 16-17-705.

(b) Upon the filing by the landlord or his or her agent or attorney of a complaint and supporting affidavit of eviction, the district court shall issue an order requiring the tenant to vacate the occupied premises or to show cause why he or she should not be evicted by the court within ten (10) calendar days after the date of service of a copy of the order upon the tenant.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 4.

Amendments. The 2009 amendment inserted (a)(1)(B) and redesignated the remainder of (a)(1) accordingly; inserted "district" and "complaint and supporting" in (a)(1)(A) and (b); rewrote (a)(2), which read: "The fee for filing an affidavit of eviction shall be twenty-five dollars ($25.00)"; inserted "calendar" in (b); and made minor stylistic changes.

18-17-903. Service of order — Posting and mailing requirements.

(a) The copy of the order to vacate under § 18-17-902 may be served in the manner as is provided by law for the service of the summons in actions pending in the district court of this state.

(b) When service in accordance with subsection (a) of this section has been unsuccessfully attempted and no person is found in possession of the premises, the copy of the order to vacate may be served by leaving it affixed to the most conspicuous part of the premises.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 5.

Amendments. The 2009 amendment, in (a), inserted "to vacate" and substituted "district" for "circuit"; and in (b), deleted (b)(2), redesignated the remaining text accordingly, inserted "service in accordance with subsection (a) of this section has been unsuccessfully attempted and," and substituted "order to vacate" for "notice."

18-17-904. Tenant ejected on failure to show cause.

If the tenant fails to appear and show cause within the ten calendar-day period provided in § 18-17-902(b) as directed by the order or at the court appointed hearing date, the court shall enter judgment in favor of the plaintiff and direct the clerk to issue a writ of possession, and the tenant shall be evicted by the sheriff of the county.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 6; 2009, No. 482, § 9.

Amendments. The 2009 amendment by No. 311 substituted "ten calendar-day period as directed by the order or at the court appointed hearing date" for "ten (10) days," inserted "enter judgment in favor of the plaintiff and direct the clerk to," and substituted "possession" for "eviction."

The 2009 amendment by No. 482 inserted "provided in § 18-17-902(b)."

18-17-905. Trial of issue.

If the tenant appears and contests eviction, the court shall hear and determine the case as any other civil case.

History. Acts 2007, No. 1004, § 1.

18-17-906. Designation of parties in eviction.

In any eviction proceeding in a district court, the landlord shall be designated as plaintiff and the tenant as defendant.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 7.

Amendments. The 2009 amendment rewrote the section, which read: "In any trial before the circuit court in an eviction case, the landlord may be designated as plaintiff and the tenant as defendant."

18-17-907. Effect of judgment for plaintiff.

If the judgment is for the plaintiff, the district court shall within three (3) days issue a writ of eviction, and the tenant shall be evicted by the sheriff of the county.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 8.

Amendments. The 2009 amendment substituted "judgment" for "verdict," inserted "district," and made a minor punctuation change.

18-17-908. Effect of judgment for defendant.

If the judgment is for the defendant, the tenant shall be entitled to remain in possession until:

(1) The termination of his or her tenancy by agreement or operation of law;

(2) Failure or neglect to pay rent; or

(3) Eviction in another proceeding under this chapter or by the judgment of a court of competent jurisdiction.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 9.

Amendments. The 2009 amendment, in the introductory language, substituted "judgment" for "verdict," inserted "be entitled to," and made a minor stylistic change.

18-17-909. Appeal.

Either party may appeal in an eviction case and the appeal shall be heard and determined as other appeals in civil cases.

History. Acts 2007, No. 1004, § 1.

18-17-910. Bond required to stay eviction on appeal.

(a) An appeal in an eviction case will not stay eviction unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the court and conditioned for the payment of all costs and damages that the landlord may sustain.

(b) If the tenant fails to file the bond within five (5) days after service of the notice of appeal, the appeal shall be dismissed.

History. Acts 2007, No. 1004, § 1.

18-17-911. Accrual of rent after institution of proceedings.

(a)(1) After the commencement of eviction proceedings by the issuance of an order to vacate or to show cause as provided in § 18-17-902, the rent for the use and occupancy of the premises involved shall continue to accrue so long as the tenant remains in possession of the premises at the rate as prevailed immediately before the issuance of the order to vacate or show cause.

(2) The tenant shall be liable for the payment of the rent, the collection of which may be enforced as provided with respect to other rents.

(b) The acceptance by the landlord of any rent, whether it shall have accrued at the time of the issuance of the order to vacate or to show cause or shall subsequently accrue, shall not operate as a waiver of the landlord's right to insist upon eviction or as a renewal or extension of the tenancy, but the rights of the parties as they existed at the time of the issuance of the order to vacate or to show cause shall control.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 10; 2009, No. 482, § 10.

Amendments. The 2009 amendment by No. 311, in (a), substituted "an order" for "a rule," inserted "in § 18-17-902," substituted "order to vacate or show cause" for "rule," and deleted "by distress" following "enforced"; in (b), substituted "the issuance of the order to vacate or to show cause" for "issuing the rule," substituted "order to vacate or to show cause" for "rule"; and made minor stylistic and punctuation changes.

The 2009 amendment by No. 482 subdivided (a), substituted "order" for "rule" in two places, deleted "by distress" following "enforced" in (a)(2), and made related and minor stylistic changes.

18-17-912. Commercial leases.

(a) In any action involving a commercial lease in which the landlord sues for possession and the tenant raises defenses or counterclaims under this chapter or the lease agreement:

(1)(A) The tenant shall pay the landlord all rent that becomes due after the issuance of the order requiring the tenant to vacate or show cause as rent becomes due.

(B) The landlord shall provide the tenant with a written receipt for each payment except when the tenant pays by check; and

(2)(A) The tenant shall pay the landlord all rent allegedly owed before the issuance of the order to vacate or to show cause.

(B) However, in lieu of the payment under subdivision (a)(2)(A) of this section the tenant may be allowed to submit to the court a receipt or cancelled check, or both, indicating that payment has been made to the landlord.

(b)(1) If the amount of rent is in controversy, the court shall preliminarily determine the amount of rent to be paid to the landlord.

(2)(A) If the tenant appears in response to the order to vacate or to show cause and alleges that rent due owed under § 18-17-911 and this section has been paid, the court shall determine the issue.

(B) If the tenant has failed to comply with § 18-17-911 and this section, the court shall issue a writ of possession, and the landlord shall be placed in full possession of the premises by the sheriff.

(3) If the amount of rent due is determined at final adjudication to be less than the amount alleged by the landlord, judgment shall be entered for the tenant if the court determines that the tenant has complied fully with the provisions of § 18-17-911, this section, and the lease agreement.

(4) If the court orders that the tenant pay all rent due and accruing as of and during the pendency of the action , the judgment may require the payments to be made to either the:

(A) Commercial landlord; or

(B)(i) Clerk of the district court who shall hold the payments until the final disposition of the case.

(ii)*(a)* If payments are to be made through the district clerk's office, a fee of three percent (3%) of the rental payment shall be added to the amount paid through the district clerk's office.

(b) The fee of three percent (3%) shall be retained by the district clerk's office to defray the costs of collection.

(c) If the tenant fails to make a payment as provided in § 18-17-911 and this section, the tenant's failure to comply entitles the landlord to execution of the judgment for possession, and upon application of the landlord, the district court shall issue a writ of possession and the landlord shall be placed in full possession of the premises by the sheriff or his or her deputy.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 11; 2009, No. 482, § 11.

Amendments. The 2009 amendment by No. 311 redesignated (a), substituted "the order" for "a written rule" in (a)(1)(A), substituted "order to vacate or to show cause" for "rule" in (a)(2)(A), and inserted "under subdivision (a)(2)(A) of this section" in (a)(2)(B); rewrote (b); in (c), substituted "district court" for "circuit judge," substituted "possession" for "eviction," and substituted "sheriff or his or her deputy" for "sheriff, deputy, or constable"; and made related changes.

The 2009 amendment by No. 482 substituted "order" for "rule" in three places; substituted "or cancelled check" for "and cancelled check" in (a)(2)(B); and made minor stylistic and punctuation changes.

18-17-913. Execution of writ of possession.

In executing a writ of possession, the sheriff shall proceed in accordance with the provisions of § 18-60-310.

History. Acts 2007, No. 1004, § 1; 2009, No. 311, § 12.

Amendments. The 2009 amendment rewrote the section.

SUBTITLE 3. PERSONAL PROPERTY

CHAPTER 27

RIGHTS IN PERSONAL PROPERTY

SUBCHAPTER.
2. — Pawnbrokers.

Subchapter 2 — Pawnbrokers

SECTION.
18-27-204. Limitations on the purchase and disposition of personal property.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, and regulations governing pawn shops. 16 A.L.R.6th 219.

18-27-201. Definition.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, and regulations governing pawn shops. 16 A.L.R.6th 219.

CASE NOTES

Property Interest.

In keeping with the provisions of this section, the court held that an interest acquired by a pawn shop in pawned goods constituted a sufficient property interest to warrant due process protection under Ark. Const. Art. II, § 8 and the joint participation between the police department and the true owner of the goods in depriving the shop of the use of the goods constituted state action; thus, §§ 18-27-202 and 18-27-203 were unconstitutional in mandating the pawn shop to return the goods to the owner based merely on the owner's request before a judicial determination of ownership had taken place and in assessing attorney fees and costs against the shop after the owner was subsequently adjudicated the true owner. Landers v. Jameson, 355 Ark. 163, 132 S.W.3d 741 (2003).

18-27-202. Return of stolen personal property to owner.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, and regulations governing pawn shops. 16 A.L.R.6th 219.

CASE NOTES

Constitutionality.

In keeping with the provisions of § 18-27-201, the court held that an interest acquired by a pawn shop in pawned goods constituted a sufficient property interest to warrant due process protection under Ark. Const. Art. II, § 8 and the joint participation between the police department and the true owner of the goods in depriving the shop of the use of the goods constituted state action; thus, this section and § 18-27-203 were unconstitutional in mandating the pawn shop to return the goods to the owner based merely on the owner's request before a judicial determination of ownership had taken place and in assessing attorney fees and costs against the shop after the owner was subsequently adjudicated the true owner. Landers v. Jameson, 355 Ark. 163, 132 S.W.3d 741 (2003).

18-27-203. Refusal to return property — Liability.

CASE NOTES

Constitutionality.

In keeping with the provisions of § 18-27-201, the court held that an interest acquired by a pawn shop in pawned goods constituted a sufficient property interest to warrant due process protection under Ark. Const. Art. II, § 8, and the joint participation between the police department and the true owner of the goods in depriving the shop of the use of the goods constituted state action; thus, § 18-27-202 and this section were unconstitutional in mandating the pawn shop to return the goods to the owner based merely on the owner's request before a judicial determination of ownership had taken place and in assessing attorney fees and costs against the shop after the owner was subsequently adjudicated the true owner. Landers v. Jameson, 355 Ark. 163, 132 S.W.3d 741 (2003).

18-27-204. Limitations on the purchase and disposition of personal property.

(a) As used in this section, "pawnbroker" means any person, firm, or corporation, or an agent of any person, firm, or corporation, who is engaged in the business of lending money upon the security of articles of personal property or purchasing personal property.

(b) No pawnbroker shall purchase or receive personal property as security from any person under eighteen (18) years of age who has not been emancipated under § 9-26-104.

(c) No pawnbroker shall dispose of personal property purchased or received as security until at least fifteen (15) calendar days after the personal property is purchased or pawned or at least seven (7) calendar days after the purchase or pawn is reported to the local police, whichever comes first, unless the personal property is redeemed by the person who sold or pawned it.

(d) The provisions of this section shall not be applicable to personal property purchased by the pawnbroker from a retailer or a wholesaler.

(e)(1) The failure on the part of a pawnbroker to comply with a provision of this section shall be a violation.

(2) Upon conviction, the offender shall be punished by a fine of not more than one thousand dollars ($1,000).

History. Acts 1993, No. 1131, § 1; 2005, No. 1994, § 94.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, and regulations governing pawn shops. 16 A.L.R.6th 219.

CHAPTER 28
UNCLAIMED PROPERTY

SUBCHAPTER.
1. — General Provisions.
2. — Unclaimed Property Act.
4. — Mineral Proceeds.

Subchapter 1 — General Provisions

SECTION.

18-28-102. Abandonment of jewelry with jeweler or merchant for service, repair, or on consignment — Disposition.

(a) An item of jewelry left with a jeweler or merchant for service or repair or on consignment that is not claimed within one (1) year or by a later time if the later time is specified in writing shall be deemed abandoned property and may be disposed of under this section without recourse by or liability to the party delivering the jewelry, the owner of the jewelry, or any other party.

(b) The jeweler or merchant may dispose of the jewelry if at the time of receiving the jewelry:

(1) The jeweler or merchant gives the party delivering the jewelry notice in writing that:

(A) The jeweler or merchant may dispose of the jewelry without any liability or accountability to the party delivering the jewelry, the owner of the jewelry, or any other party unless the jewelry is reclaimed within one (1) year or by a later time if the later time is specified by the parties in writing; and

(B) The party delivering the jewelry, the owner of the jewelry, or any other interested party must supply to the jeweler or merchant a current mailing address in order to receive notice of a sale or other disposition of the property after one (1) year or by a later time if the later time is specified by the parties in writing; and

(2) The jeweler or merchant receives a current mailing address from the party delivering the jewelry and, if different, the owner of the jewelry.

(c)(1) Notice that the jewelry is deemed abandoned under this section shall be sent by certified mail to each current mailing address that has been supplied to the jeweler or merchant at least fifteen (15) days prior to the sale or other disposition of the jewelry, or a different time period if agreed to by the parties in writing.

(2) The failure of the party delivering the jewelry, the owner of the jewelry, or any other interested party to supply a current mailing address in order to receive notice of the sale or other disposition of the jewelry is a waiver of any right, claim, or interest in the jewelry.

(d)(1) A jeweler or merchant that disposes of jewelry under this section shall apply the proceeds from the sale or other disposition of the jewelry to:

(A) A reasonable handling charge of the jeweler or merchant, not to exceed fifty dollars ($50.00); and

(B) The indebtedness owed to the jeweler or merchant for repairs or services performed in connection with the jewelry.

(2) Any proceeds that exceed the amount necessary to make the jeweler or merchant whole under subdivision (d)(1) of this section shall be treated as unclaimed property and reported and paid to the Auditor of State under § 18-28-201 et seq.

History. Acts 2009, No. 652, § 1.

Subchapter 2 — Unclaimed Property Act

A.C.R.C. Notes. As enacted by Acts 1999, No. 850, this subchapter principally follows the Uniform Unclaimed Property Act of 1995.

18-28-201. Definitions.

In this subchapter:

(1) "Administrator" means the Auditor of State.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organiza-

tion, insurance company, mutual fund, utility, or other business entity consisting of one (1) or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this subchapter.

(7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(i) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(ii) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(iii) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(10) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to this subchapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13)(A) "Property" means tangible property described in § 18-28-203 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

(i) Money, a check, draft, deposit, interest, or dividend;

(ii) Credit balance, customer's overpayment, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) Stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) A bond, debenture, note, or other evidence of indebtedness;

(v) Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(vi) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(B) "Property" does not include:

(i) gift certificates, gift cards, in-store merchandise credits, or layaway accounts issued or maintained by any person in the business of selling tangible personal property at retail ; or

(ii) a patronage dividend, capital credit, customer deposit, or nonnegotiated payment check that does not exceed one hundred dollars ($100) held or owing by an agricultural farm supply cooperative association organized under the laws of this state.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Utility" means persons and corporations, or their lessees, trustees, and receivers, owning or operating in this state equipment or facilities as provided in § 23-1-101(4).

History. Acts 1999, No. 850, § 1; 2009, No. 1174, § 1.

Amendments. The 2009 amendment inserted (13)(B)(ii), redesignated the existing text of (13)(B) accordingly, deleted "and such items shall not be subject to this subchapter" at the end of (13)(B)(i), and made related changes.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Implementing the Uniform Unclaimed Property Act or its Predecessor — Modern Status. 29 A.L.R.6th 507.

18-28-211. Crediting of dividends, interest, and increments to owner's account.

If property other than money is delivered to the administrator under this subchapter, the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest-bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the administrator shall not pay interest.

History. Acts 1999, No. 850, § 11; 2005, No. 175, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Property Law, 28 U. Ark. Little Rock L. Rev. 385.

18-28-212. Public sale of abandoned property.

(a)(1) Except as otherwise provided in this section, the administrator, within three (3) years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale.

(2) A sale held under this section must be preceded by a single publication of notice, at least three (3) weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. However, the administrator is not required to publish notice under this section if the abandoned property will be sold through an Internet auction.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three (3) years after their delivery to the administrator, a person making a claim under this subchapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus

dividends, interest, and other increments thereon up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this subchapter after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this subchapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

History. Acts 1999, No. 850, § 12; 2005, No. 175, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Property Law, 28 U. Ark. Little Rock L. Rev. 385.

18-28-213. Deposit of funds.

(a) All funds received under this subchapter, including the proceeds from the sale of abandoned property, shall be deposited by the administrator into a special trust fund to be known as the "Unclaimed Property Proceeds Trust Fund", from which he or she shall make prompt payment of claims duly allowed by him or her as hereinafter provided. Such funds shall be deposited into accounts in one (1) or more financial institutions authorized to do business in this state to be administered in accordance with the laws of this state pertaining to the appropriation, administration, and expenditure of cash funds. Before making the deposit, he or she shall record the name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property, and the name and last known address of each insured or annuitant, and, with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) At the end of each fiscal year, the administrator shall withdraw from the Unclaimed Property Proceeds Trust Fund an amount necessary to reimburse the State Central Services Fund, or its successor fund or fund account, for moneys expended for personal services and operating expenses of administering and enforcing this subchapter.

(c)(1)(A)(i) At least one (1) time each fiscal year, the administrator shall transfer to the treasurer of the reporting county all funds collected from that county that have not been claimed and that have been held for a full three (3) years.

(ii) The funds received by the treasurer shall be deposited into the general fund of the reporting county.

(iii) The reporting county may use the funds for any purpose for which it may use general revenues.

(B)(i) After the administrator returns funds to the county, the state is released from its indemnity of the county under § 18-28-210(b) and (f).

(ii) The county receiving the funds shall maintain an accounting of the funds in perpetuity, unless payment upon a valid claim is made.

(iii) If the rightful owner or the owner's heirs or assigns ever appear and petition the county for the return of the funds after providing proof of ownership, the county shall pay the funds to the rightful owner from the general fund of the county.

(iv) For purposes of this section, "proof of ownership" means a finding by a court of competent jurisdiction that the person petitioning the county is, in fact, the rightful owner, heir, or assignee.

(2) At least one (1) time each fiscal year, the administrator shall transfer to the general revenues of the state all remaining funds that have been collected and held for a full three (3) years, less the amount transferred to the State Central Services Fund, or its successor fund or fund account, as required by this subchapter.

(d) Each bank depository of unclaimed property funds shall secure the funds to the extent of the amount of the balance of the funds any time on hand and in such manner as the administrator shall require.

History. Acts 1999, No. 850, § 13; 2001, No. 1261, § 2; 2003, No. 1033, § 1; 2011, No. 616, § 1.

Amendments. The 2011 amendment inserted "treasurer of the" in (c)(1)(A)(i); added (c)(1)(A)(ii) and (iii); inserted "unless payment upon a valid claim is made" at the end of (c)(1)(B)(ii); and inserted "from the general fund of the county" at the end of (c)(1)(B)(iii).

18-28-215. Filing claim with administrator — Handling of claims by administrator.

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within ninety (90) days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under § 18-28-216.

(c)(1) Except as provided in subdivision (c)(2) of this section, within thirty (30) days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest, or other increment to which the claimant is entitled under §§ 18-28-211 and 18-28-212.

(2) If in order to transfer property to the claimant under this section, fees or costs are required to be paid prior to transfer, the administrator may sell all or a portion of the property and deduct the costs of transfer from the proceeds of the sale, and any proceeds remaining shall be paid to the claimant.

(d) A holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator by the owner would be subject to an increment under §§ 18-28-211 and 18-28-212, may recover from the administrator the amount of the increment.

History. Acts 1999, No. 850, § 15; 2005, No. 175, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Property Law, 28 U. Ark. Little Rock L. Rev. 385.

18-28-224. Interest and penalties.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this subchapter shall pay to the administrator interest at the annual rate of two (2) percentage points above the bank prime loan rate as reported from time to time in the Federal Reserve Board Statistical Release H.15 (Selected Interest Rates) or any successor publication on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in subsection (c), a holder who fails to report, pay, or deliver property within the time prescribed by this subchapter, or fails to perform other duties imposed by this subchapter, shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of two hundred dollars ($200) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of five thousand dollars ($5,000).

(c) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this subchapter, or willfully fails to perform other duties imposed by this subchapter, shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this subchapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, interest under subsection (a) and penalties under subsections (b) and (c), and shall waive penalties if the holder acted in good faith and without negligence.

History. Acts 1999, No. 850, § 24; 2005, No. 175, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Property Law, 28 U. Ark. Little Rock L. Rev. 385.

Subchapter 4 — Mineral Proceeds

SECTION.

18-28-402. Escrow accounts.

(a)(1) A holder of mineral proceeds shall establish an escrow account for mineral proceeds if the person entitled to the receipt of the mineral proceeds is unknown or has not been located within one (1) year after the funds became payable or distributable.

(2) The escrow account shall be for the benefit of the rightful recipient of the mineral proceeds.

(3) Any person showing to the holder of mineral proceeds sufficient proof of identity and ownership of the property shall be promptly paid the sum accumulated for his or her benefit in the escrow account.

(b)(1) If a holder of mineral proceeds is required to establish more than one (1) escrow account by operation of this section, then the mineral proceeds accruing may be commingled in a single escrow account.

(2) Separate records of each deposit and withdrawal on behalf of specific persons shall be maintained.

(c)(1) The Auditor of State and the Oil and Gas Commission shall require a report of each escrow account to be filed annually.

(2) The report shall include, but shall not be limited to:

(A) The name and last known address of the property owner;

(B) The legal description of the property interest;

(C) The location and account number of the escrow account;

(D) The name of the person authorized to order withdrawals from the escrow account; and

(E) Any other information that the Auditor of State and the commission may require.

(d) Any holder of mineral proceeds who violates this section is subject to a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation.

(e) The commission shall enforce the provisions of this subchapter and shall conduct random audits of the escrow accounts required by this section.

History. Acts 1987, No. 362, § 3; 2003, No. 1763, § 1; 2005, No. 1994, § 95; 2009, No. 1175, § 18.

Amendments. The 2009 amendment substituted "is subject to a civil penalty not to exceed two thousand five hundred dollars ($2,500)" for "shall be guilty of a violation and upon conviction shall be subject to a fine not to exceed one thousand dollars ($1,000)" in (d).

18-28-403. Abandoned mineral proceeds — Disposition of funds.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Property Law, Mineral Proceeds, 26 U. Ark. Little Rock L. Rev. 459.

SUBTITLE 4. MORTGAGES AND LIENS

CHAPTER 40
MORTGAGES

SECTION.

18-40-101. Proof or acknowledgment — Recording.

RESEARCH REFERENCES

Ark. L. Notes. Atkinson, Laurence, The Avoidance by an Arkansas Bankruptcy Trustee of a Mortgage Defectively Acknowledged, 2003 Arkansas L. Notes 1.

18-40-102. Lien attaches when recorded.

CASE NOTES

Analysis

Defective Acknowledgment.
Notice.

Defective Acknowledgment.

Jurat attached to a mortgage was not an acknowledgment and, therefore, the mortgage lien was unperfected under Arkansas law; the provisions of § 18-12-208 could not be sued to cure the defect in the mortgage because that statute did not act to supply an acknowledgment when in fact there was none. In re Beene, 354 B.R. 856 (Bankr. W.D. Ark. 2006).

Notice.

Facts in bankruptcy trustee's preferential transfer action against two creditor banks demonstrated clearly that the bank's mortgages were granted by and recorded against entities which were not record owners of the property mortgaged; thus, absent any other argument, since the banks' mortgages were not properly recorded against the entities which possessed legal interests in the properties, those mortgages did not affect title to the properties and would not operate as constructive notice under § 14-15-404(a) or this section. Rice v. First Ark. Valley Bank (In re May), 310 B.R. 405 (Bankr. E.D. Ark. 2004).

18-40-104. Acknowledgment of satisfaction on record.

(a) If any mortgagee or his or her executor, administrator, or assignee shall receive full satisfaction for the amount due on any mortgage, then at the request of the person making satisfaction, the mortgagee shall acknowledge satisfaction of the amount due on the mortgage on the margin of the record in which the mortgage is recorded.

(b) Acknowledgment of satisfaction, made as stated in subsection (a) of this section, shall have the effect to release the mortgage, bar all actions brought on the mortgage, and revest in the mortgagor or his or her legal representative all title to the mortgaged property.

(c) The trustee of a deed of trust or a person employed by the trustee shall reconvey all or any part of the property encumbered by a deed of trust to the person entitled to the property on written request of the beneficiary of the deed of trust for a reasonable fee plus costs.

(d) If any person receiving satisfaction does not, within sixty (60) days after being requested, acknowledge satisfaction as stated in subsection (a) of this section or request the trustee to reconvey the property as stated in subsection (c) of this section, he or she shall forfeit to the party aggrieved any sum not exceeding the amount of the mortgage money, to be recovered by a civil action in any court of competent jurisdiction.

(e)(1) Subsections (a) and (b) of this section do not apply in a county which uses a system other than a paper recording system.

(2) The clerk in a county which uses a system other than a paper recording system shall not allow a satisfaction by a marginal notation after December 31, 1995.

(3) A satisfaction by a marginal notation made in a county which uses a system other than a paper recording system after December 31, 1995, is void.

History. Rev. Stat., ch. 101, §§ 18-20; C. & M. Dig., §§ 7395-7397; Pope's Dig., §§ 9452-9454; A.S.A. 1947, §§ 51-1011 — 51-1013; Acts 1995, No. 1025, § 2; 2005, No. 1945, § 1.

CASE NOTES

Applicability.

Appellate court reversed and remanded trial court's cancellation of mortgage because subsection (c) of this section did not apply to a mortgage that had not yet been satisfied; on remand, the trial court did not err in denying bank's request for interest, costs, penalties, and attorney fees because it found that those had accrued solely due to bank's wrongful actions. Nationsbanc Mortg. Corp. v. Hopkins, 87 Ark. App. 297, 190 S.W.3d 299 (2004).

Cited: Nationsbanc Mortg. Corp. v. Hopkins, 87 Ark. App. 297, 190 S.W.3d 299 (2004).

CHAPTER 41

LANDLORDS' LIENS

18-41-101. Lien on crop — Period effective.

RESEARCH REFERENCES

Ark. L. Notes. Schneider, Notes on Agricultural Landlord's Liens Under Revised Article 9 of the Uniform Commercial Code, 2002 Arkansas L. Notes 53.

Ark. L. Rev. Note, Nef v. Ag Services of America, Inc.: Revised Article 9 Brings Uncertainty to Holders of Agricultural Landlord's Liens, 56 Ark. L. Rev. 871 (2004).

CASE NOTES

Analysis

Applicability.
Priority.
Sale of Crop.

Applicability.

Land that was owned by the individual partners, all members of the same family, that was never formally deeded to the partnership did not preclude the partnership from acting as a landlord for the property with the ability to enter into a lease agreement and to enforce a lien for rent under § 18-41-101 when the evidence established the owners' intent to have the partnership act accordingly. Bank of McCrory v. Morrison (In re James), 368 B.R. 800 (Bankr. E.D. Ark. 2007).

Priority.

Landlords' lien interest in the crop proceeds took priority over a perfected security interest that a creditor bank had in the same proceeds, regardless of when the bank's conflicting security interest was perfected. Bank of McCrory v. Morrison (In re James), 368 B.R. 800 (Bankr. E.D. Ark. 2007).

Sale of Crop.

Under this section, the trust's statutory lien was not enforceable against the buyer because it bought rice from the tenant in good faith and had no evidence which would require the buyer to make an investigation regarding a landlord's lien. Riceland Foods, Inc. v. Pearson, 2009 Ark. 520, — S.W.3d — (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 821 (Dec. 10, 2009).

CHAPTER 42

LIENS OF EMPLOYERS AND EMPLOYEES UNDER CONTRACT

18-42-101. Contracts for more than one year to be in writing.

A contract for services or labor for a period longer than one (1) year shall not entitle the parties to the benefits of this chapter unless the contract is in writing, signed by the parties, and witnessed by two (2) disinterested witnesses or acknowledged before an officer authorized by law to take an acknowledgment.

History. Acts 1883, No. 96, § 2, p. 176; 1887, No. 78, § 1, p. 108; C. & M. Dig., §§ 6879, 6880; Pope's Dig., §§ 8835, 8836; A.S.A. 1947, §§ 51-502, 51-503; Acts 2005, No. 917, § 1.

18-42-104. Filing and indexing of contracts.

(a) A copy of the contract or the original shall be filed in the recorder's office of the proper county. The filing shall be sufficient notice of the existence of the lien.

(b) No third party shall be prejudiced by the existence of the lien, nor in any manner liable under a provision of this chapter unless a copy of the contract is filed in the recorder's office as provided.

History. Acts 1883, No. 96, § 4, p. 176; C. & M. Dig., §§ 6883, 6884; Pope's Dig., §§ 8839, 8840; A.S.A. 1947, § 51-506; Acts 2005, No. 917, § 2.

CHAPTER 44

MECHANICS' AND MATERIALMEN'S LIENS

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

RESEARCH REFERENCES

Ark. L. Notes. Longino, The Treatment of a Residential Mechanic's Lien Under the Provisions of the Bankruptcy Code: When do the Walls Come Tumbling Down?, 2002 Arkansas L. Notes 113.

18-44-101. Liens on buildings, land, or boats.

RESEARCH REFERENCES

Ark. L. Notes. Circo, Put the Arkansas Construction Lien Notice Statute Out of Its Misery, 2008 Ark. L. Notes 3.

Ark. L. Rev. Note, BB & B Construction Company v. F.D.I.C. — Mechanics' and Materialmen's Liens in Arkansas: Priority as a Function of Removability, 48 Ark. L. Rev. 783.

Recent Developments: Contracts — Forum Selection Clause, 57 Ark. L. Rev. 215 (2004).

Comment, Contracting Away an Honest Day's Pay: An Examination of Conditional Payment Clauses in Construction Contracts, 58 Ark. L. Rev. 353.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Contract Law, 27 U. Ark. Little Rock L. Rev. 665.

CASE NOTES

Analysis

Construction.
Entitlement to Lien.
Scope of Lien.

Construction.

In Arkansas, a materialman's lien arises by statute on the date construction begins; it remains inchoate until it is perfected (or expires by failure to timely perfect); and upon perfection, it relates back to the date construction began. Betty's Homes, Inc. v. Cooper Homes, Inc., 411 B.R. 626 (Bankr. W.D. Ark. 2009).

Entitlement to Lien.

Subcontractors, as materialmen, had a statutory right to seek judgment on their liens previously filed pursuant to Arkansas law and foreclosure on the general contractor's real property located in Arkansas; subsection (a) gave the subcontractors an absolute right to file such a lien and the choice-of-law provision in the contracts was meaningless because, as to real property located within Arkansas, this statute controlled over the forum-selection clause in the contract. RMP Rentals v. Metroplex, Inc., 356 Ark. 76, 146 S.W.3d 861 (2004).

Subcontractor did not acquire a mechanic's and materialman's lien on a home because neither the subcontractor nor the contractor gave the homeowner the notice required by § 18-44-115, notwithstanding that the subcontractor provided the notice required by § 18-44-114(a). Bryant v. Jim Atkinson Tile, 100 Ark. App. 408, 269 S.W.3d 383 (2007).

Scope of Lien.

Lien provided by this section did not extend to profits on a cost-plus contract, but only to the costs of labor and material, and where the trial court improperly allowed the construction company the full amount of its claim, which included the builder's fee, without segregating the builder's fee or any profits, that portion of the trial court's judgment was reversed. Hickman v. Kralicek Realty & Constr. Co., 84 Ark. App. 61, 129 S.W.3d 317 (2003).

Entire value of a materialman's lien for steel was properly found to attach to four barges; the barge builder failed to rebut the presumption that the barges incorporated the supplier's steel. An argument that the presumption did not apply because the steel was not solely furnished for the barge project failed because substantial evidence indicated that the supplier understood that the steel was to be used to build the barges. Falcon Steel, Inc. v. J. Russell Flowers, Inc., 635 F.3d 369 (8th Cir. 2011).

18-44-104. Liens for drain pipe or tile.

(a) Every contractor, subcontractor, or material supplier who shall furnish to any landowner any soil or drain pipe or tile for drainage of his or her land, or who shall put in soil or drain pipe or tile for any land,

shall have a lien for each tract of forty (40) acres or less of the real estate upon which the soil or drain pipe or tile is placed for the payment of the lien.

(b)(1) The lien for the soil or drain pipe or tile shall attach to the real estate and all improvements thereon in preference to any subsequent liens, encumbrance, or mortgage executed upon the land after the purchase of the soil or drain pipe or tile.

(2) The lien shall be:

(A) Subject to the notice requirements of §§ 18-44-114 and 18-44-115;

(B) Filed under § 18-44-117; and

(C) Enforced under this subchapter.

History. Acts 1913, No. 253, §§ 1, 2; C. & M. Dig., § 6924; Pope's Dig., § 8886; A.S.A. 1947, §§ 51-602, 51-603; Acts 2009, No. 454, § 1.

Amendments. The 2009 amendment, in (a), deleted (a)(2), which read: "The lien shall extend for a period of two (2) years," redesignated the remaining text accordingly, and substituted "contractor, subcontractor, or material supplier" for "manufacturer or contractor"; rewrote (b)(2), which read: "The lien shall be enforced in the same manner as a mechanic's or contractor's liens"; and made related and minor stylistic changes.

18-44-105. Lien of architect, engineer, surveyor, appraiser, landscaper, abstractor, or title insurance agent.

(a) Every architect, engineer, surveyor, appraiser, landscaper, abstractor, or title insurance agent who shall do or perform any architectural, engineering, surveying, appraisal, landscaping, or abstracting services upon any land, or who shall issue a title insurance policy or provide landscaping supplies upon any land, building, erection, or improvement upon land, under or by virtue of any written agreement for the performance of the work with the owner thereof, or his or her agent, shall have a lien upon the land, building, erection, or improvement upon land to the extent of the agreed contract price or a reasonable price for those services.

(b)(1) However, the lien does not attach to the land, building, erection, or improvement upon land unless and until the lien is duly filed of record with the circuit clerk and recorder in the county in which the land, building, erection, or improvement is located.

(2) The lien shall be:

(A) Subject to the notice requirements of §§ 18-44-114 and 18-44-115;

(B) Filed under § 18-44-117; and

(C) Enforced under this subchapter.

History. Acts 1971, No. 291, § 1; A.S.A. 1947, § 51-642; Acts 2009, No. 454, § 1.

Amendments. The 2009 amendment rewrote the section heading; in (a), substituted "architect, engineer, surveyor, appraiser, landscaper, abstractor, or title insurance agent who shall do or perform any architectural ... landscaping supplies" for "engineer or surveyor who shall do or perform any engineering or surveying work," and substituted "written agreement for the performance of work" for

"contract or agreement"; and rewrote (b)(2), which read: "This recorded lien will be enforced in the same manner as a mechanic's or contractor's lien."

18-44-106. "Owner" defined.

As used in this subchapter, the "owner" of property shall include the owner of the legal title to property and any person, including all cestui que trust, for whose immediate use, enjoyment, or benefit a building, erection, or other improvement is made.

History. Acts 1895, No. 146, § 22, p. 217; C. & M. Dig., § 6933; Pope's Dig., § 8895; A.S.A. 1947, § 51-623; Acts 2009, No. 454, § 1.

Amendments. The 2009 amendment rewrote the section heading; substituted "As used in this subchapter, the 'owner' of property shall include the owner of the legal title to property and any" for "Every," deleted "shall be concluded by the words 'owner or proprietor thereof', under this subchapter" following "improvement is made," and made related changes.

18-44-107. Subcontractors.

RESEARCH REFERENCES

Ark. L. Notes. Circo, Put the Arkansas Construction Lien Notice Statute Out of Its Misery, 2008 Ark. L. Notes 3.

18-44-108. Refusal to list parties doing work or furnishing materials.

(a) The owner or proprietor, material supplier, subcontractor, or anyone interested as mortgagee or trustee in the real estate upon which improvements are made under this subchapter may apply at any time to the contractor or subcontractor for the following:

(1) A list of all parties doing work or furnishing material for a building and the amount due to each of the parties; and

(2) Certification that the owner or agent has received the preliminary notice specified under § 18-44-115(a), if applicable.

(b) Any contractor or subcontractor who, upon request, refuses or fails within five (5) business days to give a correct list of the parties furnishing material or doing labor on the building and the amount due to each or who falsely certifies that an owner or agent has received the preliminary notice specified under § 18-44-115 shall be:

(1) Guilty of a violation and upon conviction shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500); and

(2)(A) Subject to suit by an aggrieved party in the circuit court where the property is located to enforce subsection (a) of this section including, without limitation, by the contempt powers of the circuit court.

(B) The prevailing party in an action under this subdivision (b)(2) shall receive a judgment for any damages proximately caused by the violation of subsection (a) of this section, the costs of the action, and a reasonable attorney's fee.

History. Acts 1895, No. 146, § 10, p. 217; C. & M. Dig., § 6921; Pope's Dig., § 8880; A.S.A. 1947, § 51-612; Acts 1995, No. 1298, § 3; 2005, No. 1994, § 96; 2009, No. 454, § 2.

Amendments. The 2009 amendment substituted "§ 18-44-115(a), if applicable" for "§ 18-44-115" in (a)(2); and in (b), inserted (b)(2), redesignated the remaining text accordingly, and made related changes.

18-44-109. Unlawful to use materials other than as designated.

Any contractor or subcontractor who shall purchase materials on credit and represent at the time of purchase that they are to be used in a designated building or other improvement and shall thereafter use, or cause to be used, the materials in the construction of any building or improvement other than that designated without the written consent of the person from whom the materials were purchased with intent to defraud that person shall be guilty of a violation if the materials were valued at one thousand dollars ($1,000) or more and upon conviction shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500).

History. Acts 1895, No. 146, § 10, p. 217; C. & M. Dig., § 6921; Pope's Dig., § 8880; A.S.A. 1947, § 51-612; Acts 1995, No. 1298, § 4; 2005, No. 1994, § 97.

18-44-110. Preference over prior liens — Exception.

CASE NOTES

Construction.

Although a materialman's lien was considered to relate back to the date on which the particular material was furnished, a materials supplier that filed a materialman's lien on property after a bank had filed a foreclosure complaint and a lis pendens on the same property was subject to the lis pendens because the supplier did not obtain an interest in the property prior to the filing of the lis pendens. Nat'l Home Ctrs., Inc. v. Coleman, 373 Ark. 246, 283 S.W.3d 218 (2008).

18-44-113. Assignment of liens.

(a) The lien given in this subchapter shall be transferable and assignable, but it shall not be enforced against the owner of the ground or buildings unless the owner of the ground or buildings shall have actual notice of the assignment or notice under subsection (b) of this section.

(b) The owner of the ground or buildings shall be considered to have actual notice if within thirty (30) days of the assignment a copy of the assignment is:

(1) Hand delivered to the owner of the ground or buildings;

(2) Mailed to the last known address of the owner of the ground or buildings and verified by a:

(A) Return receipt signed by the addressee or the agent of the addressee; or

(B) Returned envelope, postal document, or affidavit by a postal employee reciting or showing refusal of the notice by the addressee or that the item was unclaimed; or

(3) Delivered by any means that provides written, third-party verification of delivery at any place that the owner of the ground or buildings maintains an office, conducts business, or resides.

History. Acts 1895, No. 146, § 25, p. 217; C. & M. Dig., §§ 6907, 6936; Pope's Dig., §§ 8866, 8898; A.S.A. 1947, § 51-626; Acts 2009, No. 454, § 3.

Amendments. The 2009 amendment added (b) and redesignated the remaining text accordingly; in (a), deleted "or proprietor" following "owner" twice, and substituted "or notice under subsection (b) of this section" for "so as to protect himself or herself"; and made a stylistic change.

18-44-114. Notice and service generally.

(a) Every person who may wish to avail himself or herself of the benefit of the provisions of this subchapter shall give ten (10) days' notice before the filing of the lien, as required in § 18-44-117(a), to the owner of a building or improvement that he or she holds a claim against the building or improvement, setting forth the amount and from whom it is due.

(b)(1) The notice may be served by any:

(A) Officer authorized by law to serve process in a civil action;

(B) Person who would be a competent witness;

(C) Form of mail addressed to the person to be served, with a return receipt requested and delivery restricted to the addressee or the agent of the addressee; or

(D) Means that provides written, third-party verification of delivery at any place where the owner of the building or improvement maintains an office, conducts business, or resides.

(2)(A)(i) When served by an officer, his or her official return endorsed on the notice shall be proof of the service.

(ii) When served by any other person, the fact of the service shall be verified by affidavit of the person serving the notice.

(B)(i) When served by mail, the service shall be:

(a) Complete when mailed; and

(b) Verified by a return receipt signed by the addressee or the agent of the addressee, or a returned envelope, postal document, or affidavit by a postal employee reciting or showing refusal of the notice by the addressee or that the item was unclaimed.

(ii) If delivery of the mailed notice is refused by the addressee or the item is unclaimed:

(a) The lien claimant shall immediately send the owner of the building or improvement a copy of the notice by first class mail and may proceed to file his or her lien; and

(b) The unopened original of the item marked unclaimed or refused by the United States Postal Service shall be accepted as proof of service as of the postmarked date of the item.

History. Acts 1895, No. 146, § 6, p. 217; C. & M. Dig., § 6917; Pope's Dig., § 8876; A.S.A. 1947, § 51-608; Acts 1991, No. 588, § 1; 1999, No. 1466, § 1; 2005, No. 2287, § 5; 2009, No. 454, § 3.

Amendments. The 2009 amendment substituted "owner of a building or improvement" for "owner, owners, or agent, or either of them" in (a); in (b), inserted (b)(1)(D), (b)(2)(B)(i)(a), and (b)(2)(B)(ii)(b), redesignated subdivisions accordingly, inserted "or that the item was unclaimed" in (b)(2)(B)(i)(b), inserted "or the item is unclaimed" in (b)(2)(B)(ii), and rewrote (b)(2)(B)(ii)(a); and made related and minor stylistic changes.

CASE NOTES

Compliance.

Subcontractor did not acquire a mechanic's and materialman's lien on a home, notwithstanding that the subcontractor gave the homeowner the notice required by this section, because neither the subcontractor nor the contractor provided the notice required by § 18-44-115. Bryant v. Jim Atkinson Tile, 100 Ark. App. 408, 269 S.W.3d 383 (2007).

18-44-115. Notice to owner by contractor.

(a)(1) No lien upon residential real estate containing four (4) or fewer units may be acquired by virtue of this subchapter unless the owner of the residential real estate, the owner's authorized agent, or the owner's registered agent has received, by personal delivery or by certified mail, a copy of the notice set out in this subsection.

(2) The notice required by this subsection shall not require the signature of the owner of the residential real estate, the owner's authorized agent, or the owner's registered agent in an instance when the notice is delivered by certified mail.

(3) It shall be the duty of the residential contractor to give the owner, the owner's authorized agent, or the owner's registered agent the notice set out in this subsection on behalf of all potential lien claimants before the commencement of work.

(4) If a residential contractor fails to give the notice required under this subsection, then the residential contractor is barred from bringing an action either at law or in equity, including without limitation quantum meruit, to enforce any provision of a residential contract.

(5)(A) Any potential lien claimant may also give notice.

(B)(i) If before commencing work or supplying goods a subcontractor, material supplier, laborer, or other lien claimant gives notice under this section, the notice shall be effective for all subcontractors, material suppliers, laborers, and other lien claimants not withstanding that the notice was given after the project commences as defined under § 18-44-110(a)(2).

(ii) If the notice relied upon by a lien claimant to establish a lien under this subchapter is given by another lien claimant under subdivision (a)(5)(B)(i) of this section after the project commences, the lien of the lien claimant shall secure only the labor, material, and services supplied after the effective date of the notice under subdivision (a)(5)(B)(i) of this section.

(C) However, no lien may be claimed by any subcontractor, laborer, material supplier, or other lien claimant unless the owner of the

residential real estate, the owner's authorized agent, or the owner's registered agent has received at least one (1) copy of the notice, which need not have been given by the particular lien claimant.

(6) A residential contractor who fails to give the notice required by this subsection is guilty of a violation pursuant to § 5-1-108 and upon pleading guilty or nolo contendere to or being found guilty of failing to give the notice required by this subsection shall be punished by a fine not exceeding one thousand dollars ($1,000).

(7) The notice set forth in this subsection may be incorporated into the contract or affixed to the contract and shall be conspicuous, set out in boldface type, worded exactly as stated in all capital letters, and shall read as follows:

"IMPORTANT NOTICE TO OWNER

I UNDERSTAND THAT EACH CONTRACTOR, SUBCONTRACTOR, LABORER, SUPPLIER, ARCHITECT, ENGINEER, SURVEYOR, APPRAISER, LANDSCAPER, ABSTRACTOR, OR TITLE INSURANCE AGENT SUPPLYING LABOR, SERVICES, MATERIAL, OR FIXTURES IS ENTITLED TO A LIEN AGAINST THE PROPERTY IF NOT PAID IN FULL FOR THE LABOR, SERVICES, MATERIALS, OR FIXTURES USED TO IMPROVE, CONSTRUCT, OR INSURE OR EXAMINE TITLE TO THE PROPERTY EVEN THOUGH THE FULL CONTRACT PRICE MAY HAVE BEEN PAID TO THE CONTRACTOR. I REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE PROPERTY IF NECESSARY. I AM ALSO AWARE THAT PAYMENT MAY BE WITHHELD TO THE CONTRACTOR IN THE AMOUNT OF THE COST OF ANY SERVICES, FIXTURES, MATERIALS, OR LABOR NOT PAID FOR. I KNOW THAT IT IS ADVISABLE TO, AND I MAY, REQUIRE THE CONTRACTOR TO FURNISH TO ME A TRUE AND CORRECT FULL LIST OF ALL SUPPLIERS AND SERVICE PROVIDERS UNDER THE CONTRACT, AND I MAY CHECK WITH THEM TO DETERMINE IF ALL MATERIALS, LABOR, FIXTURES, AND SERVICES FURNISHED FOR THE PROPERTY HAVE BEEN PAID FOR. I MAY ALSO REQUIRE THE CONTRACTOR TO PRESENT LIEN WAIVERS BY ALL SUPPLIERS AND SERVICE PROVIDERS, STATING THAT THEY HAVE BEEN PAID IN FULL FOR SUPPLIES AND SERVICES PROVIDED UNDER THE CONTRACT, BEFORE I PAY THE CONTRACTOR IN FULL. IF A SUPPLIER OR OTHER SERVICE PROVIDER HAS NOT BEEN PAID, I MAY PAY THE SUPPLIER OR OTHER SERVICE PROVIDER AND CONTRACTOR WITH A CHECK MADE PAYABLE TO THEM JOINTLY.

SIGNED:_____

ADDRESS OF PROPERTY_____

DATE:_____

I HEREBY CERTIFY THAT THE SIGNATURE ABOVE IS THAT OF THE OWNER, REGISTERED AGENT OF THE OWNER, OR AUTHORIZED AGENT OF THE OWNER OF THE PROPERTY AT THE ADDRESS SET OUT ABOVE.

_____

CONTRACTOR"

(8)(A) If the residential contractor supplies a performance and payment bond or if the transaction is a direct sale to the property owner, the notice requirement of this subsection shall not apply, and the lien rights arising under this subchapter shall not be conditioned on the delivery and execution of the notice.

(B) A sale shall be a direct sale only if the owner orders materials or services from the lien claimant.

(b)(1)(A) The General Assembly finds that owners and developers of commercial real estate are generally knowledgeable and sophisticated in construction law, are aware that unpaid laborers, subcontractors, and material suppliers are entitled to assert liens against the real estate if unpaid, and know how to protect themselves against the imposition of mechanics' and material suppliers' liens.

(B) The General Assembly further finds that consumers who construct or improve residential real estate containing four (4) or fewer units generally do not possess the same level of knowledge and awareness and need to be informed of their rights and responsibilities.

(2) As used in this subsection:

(A) "Commercial real estate" means:

(i) Nonresidential real estate; and

(ii) Residential real estate containing five (5) or more units; and

(B) "Service provider" means an architect, an engineer, a surveyor, an appraiser, a landscaper, an abstractor, or a title insurance agent.

(3) Because supplying the notice specified in subsection (a) of this section imposes a substantial burden on laborers, subcontractors, service providers, and material suppliers, the notice requirement mandated under subsection (a) of this section as a condition precedent to the imposition of a lien by a laborer, subcontractor, service provider, or material supplier shall apply only to construction of or improvement to residential real estate containing four (4) or fewer units.

(4) No subcontractor, service provider, material supplier, or laborer shall be entitled to a lien upon commercial real estate unless the subcontractor, service provider, material supplier, or laborer notifies the owner of the commercial real estate being constructed or improved, the owner's authorized agent, or the owner's registered agent in writing

that the subcontractor, service provider, material supplier, or laborer is currently entitled to payment but has not been paid.

(5)(A) The notice shall be sent to the owner, the owner's authorized agent, or the owner's registered agent and to the contractor before seventy-five (75) days have elapsed from the time that the labor was supplied or the materials furnished.

(B) The notice may be served by any:

(i) Officer authorized by law to serve process in civil actions;

(ii) Form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee; or

(iii) Means that provides written, third-party verification of delivery at any place where the owner, the owner's registered agent, or the owner's authorized agent maintains an office, conducts business, or resides.

(C) When served by mail, the notice shall be complete when mailed.

(D) If delivery of the mailed notice is refused by the addressee or the item is unclaimed:

(i) The lien claimant shall immediately send the owner, the owner's authorized agent, or the owner's registered agent a copy of the notice by first class mail; and

(ii) The unopened original of the item marked unclaimed or refused by the United States Postal Service shall be accepted as proof of service as of the postmarked date of the item.

(6) The notice shall contain the following information:

(A) A general description of the labor, service, or materials furnished, and the amount due and unpaid;

(B) The name and address of the person furnishing the labor, service, or materials;

(C) The name of the person who contracted for purchase of the labor, service, or materials;

(D) A description of the job site sufficient for identification; and

(E) The following statement set out in boldface type and all capital letters:

"NOTICE TO PROPERTY OWNER

IF BILLS FOR LABOR, SERVICES, OR MATERIALS USED TO CONSTRUCT OR PROVIDE SERVICES FOR AN IMPROVEMENT TO REAL ESTATE ARE NOT PAID IN FULL, A CONSTRUCTION LIEN MAY BE PLACED AGAINST THE PROPERTY. THIS COULD RESULT IN THE LOSS, THROUGH FORECLOSURE PROCEEDINGS, OF ALL OR PART OF YOUR REAL ESTATE BEING IMPROVED. THIS MAY OCCUR EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY WISH TO PROTECT YOUR-

SELF AGAINST THIS CONSEQUENCE BY PAYING THE ABOVE NAMED PROVIDER OF LABOR, SERVICES, OR MATERIALS DIRECTLY, OR MAKING YOUR CHECK PAYABLE TO THE ABOVE NAMED PROVIDER AND CONTRACTOR JOINTLY."

History.
Acts 1979, No. 746, §§ 1-5; 1981, No. 669, § 1; 1983, No. 304, § 1; A.S.A. 1947, §§ 51-608.1 — 51-608.6; Acts 1995, No. 1298, § 7; 2005, No. 1994, § 98; 2005, No. 2287, § 3; 2009, No. 454, § 3; 2011, No. 271, § 5.

Amendments. The 2009 amendment rewrote the section.

The 2011 amendment substituted "suppliers" for "supplies" in (a)(5)(B)(i).

RESEARCH REFERENCES

Ark. L. Notes. Circo, Put the Arkansas Construction Lien Notice Statute Out of Its Misery, 2008 Ark. L. Notes 3.

Ark. L. Rev. Comment, Contracting Away an Honest Day's Pay: An Examination of Conditional Payment Clauses in Construction Contracts, 58 Ark. L. Rev. 353.

CASE NOTES

Analysis

Strict Compliance.
Subcontractor.
Timing of Notice.

Strict Compliance.

Subcontractor did not acquire a mechanic's and materialman's lien on a home because neither the subcontractor nor the contractor gave the homeowner the notice required by this section, which had to be strictly complied with, notwithstanding that the subcontractor provided the notice required by § 18-44-114(a). Bryant v. Jim Atkinson Tile, 100 Ark. App. 408, 269 S.W.3d 383 (2007).

Subcontractor.

Subdivision (b)(1)(B) of this section protects a subcontractor from the contractor who fails to give notice. The distinction between contractors and subcontractors in subdivision (b)(1)(B) of this section is that the contractor has a legal duty to serve the notice before the work is commenced, while the subcontractor may serve the notice. Bryant v. Cadena Contr., Inc., 100 Ark. App. 377, 269 S.W.3d 378 (2007).

Timing of Notice.

"Important notice to owner" under subsection (c) of this section must be given by either a contractor or subcontractor before the work is done in order for it to be of any practical value. Therefore, a trial court erred by finding that there was a valid mechanics' lien against real property based on the fact that a subcontractor was not paid for framing since the subcontractor had not delivered the notice personally or by certified mail until after the work was completed. Bryant v. Cadena Contr., Inc., 100 Ark. App. 377, 269 S.W.3d 378 (2007).

18-44-116. Service on nonresident or absconder.

(a)(1) Whenever property is sought to be charged with a lien under this subchapter, the notice may be filed with the recorder of deeds of the county in which the property is situated if the owner of the property so sought to be charged:

(A) Is not a resident of this state;

(B) Does not have an agent in the county in which the property is situated;

(C) Is a resident of this state but not of the county in which the property is situated; or

(D) Conceals himself or herself, has absconded, or absents himself or herself from his or her usual place of abode, so that the notice required by § 18-44-114 or § 18-44-115 cannot be served upon him or her.

(2) When filed, the notice shall have like effect as if served upon the owner or his or her agent in the manner contemplated in § 18-44-114 or § 18-44-115.

(b) A copy of the notice so filed, together with the certificate of the recorder of deeds that it is a correct copy of the notice so filed, shall be received in all courts of this state as evidence of the service, as provided in this section, of the notice.

(c)(1) The recorder of deeds in each county of this state shall receive, file, and keep every such notice presented to him or her for filing and shall further record it at length in a separate book appropriately entitled.

(2) For service so performed, the recorder of deeds shall receive for each notice, the sum of twenty-five cents (25¢), and for each copy certified, as stated in this section, of each of the notices he or she shall receive the sum of fifty cents (50¢), to be paid by the party so filing or procuring the certified copy, as the case may be.

(d) The costs of filing and of one (1) certified copy shall be taxed as costs in any lien suit to which it pertains to abide the result of the suit.

History. Acts 1895, No. 146, § 7, p. 217; C. & M. Dig., § 6918; Pope's Dig., § 8877; A.S.A. 1947, § 51-609; Acts 2009, No. 454, § 3.

Amendments. The 2009 amendment inserted "or § 18-44-115" in (a)(1)(D) and (a)(2); and made a minor stylistic change.

18-44-117. Filing of lien.

(a)(1) It shall be the duty of every person who wishes to avail himself or herself of the provisions of this subchapter to file with the clerk of the circuit court of the county in which the building, erection, or other improvement to be charged with the lien is situated and within one hundred twenty (120) days after the things specified in this subchapter shall have been furnished or the work or labor done or performed:

(A) A just and true account of the demand due or owing to him or her after allowing all credits; and

(B) An affidavit of notice attached to the lien account.

(2) The lien account shall contain a correct description of the property to be charged with the lien, verified by affidavit.

(3) The affidavit of notice shall contain:

(A) A sworn statement evidencing compliance with the applicable notice provisions of §§ 18-44-114 — 18-44-116; and

(B) A copy of each applicable notice given under §§ 18-44-114 — 18-44-116.

(b)(1)(A) It shall be the duty of the clerk of the circuit court to endorse upon every account the date of its filing and to make an abstract of the account in a book kept by him or her for that purpose, properly indexed.

(B) This abstract shall contain:

(i) The date of the filing;

(ii) The name of the person laying or imposing the lien;

(iii) The amount of the lien;

(iv) The name of the person against whose property the lien is filed; and

(v) A description of the property to be charged with the lien.

(2) For this service, the clerk shall receive the sum of three dollars ($3.00) from the person laying or imposing the lien, which shall be taxed and collected as other costs in case there is suit on the lien.

(3) The clerk shall refuse to file a lien account that does not contain the affidavits and attachments required by this section.

History. Acts 1895, No. 146, §§ 11, 12, p. 217; C. & M. Dig., §§ 6922, 6923; Pope's Dig., §§ 8881, 8882; Acts 1945, No. 55, § 2; 1961, No. 239, § 1; 1963, No. 124, § 1; 1977, No. 333, § 3; A.S.A. 1947, §§ 12-1720, 51-613, 51-614; Acts 2005, No. 2287, § 1; 2007, No. 810, § 1; 2009, No. 454, § 3.

Amendments. The 2007 amendment substituted "file with the clerk" for "file a just and true account of the demand due or owing to him or her after allowing all credits, with the clerk" in (a)(1); added (a)(1)(A) and (B); inserted "lien" in (a)(2); added (a)(3); added (b)(3); and made a related change.

The 2009 amendment deleted "account — Abstract" at the end of the section heading; and inserted "applicable" in (a)(3)(A) and (a)(3)(b).

RESEARCH REFERENCES

Ark. L. Rev. Comment, Contracting Away an Honest Day's Pay: An Examination of Conditional Payment Clauses in Construction Contracts, 58 Ark. L. Rev. 353.

CASE NOTES

Analysis

Relation Back.
Time for Filing.

Relation Back.

Although a materialman's lien was considered to relate back to the date on which the particular material was furnished, a materials supplier that filed a materialman's lien on property after a bank had filed a foreclosure complaint and a lis pendens on the same property was subject to the lis pendens because the supplier did not obtain an interest in the property prior to the filing of the lis pendens. Nat'l Home Ctrs., Inc. v. Coleman, 373 Ark. 246, 283 S.W.3d 218 (2008).

Time for Filing.

Trial court did not err in granting contractor's motion to dismiss subcontractor's action, based on a forum selection clause, and in dismissing subcontractor's unjust enrichment claim against property developer because subcontractor's lien was untimely under the 120-day time limit provided in this section and, thus, the lien was not perfected and the complaint could not have been an in rem action; further, once the contractor posted a bond pursuant to § 18-44-118, the lien had been discharged. Servewell Plumbing, LLC v. Summit Contrs., Inc., 362 Ark. 598, 210 S.W.3d 101 (2005).

Materialman's lien on barges was not untimely under subdivision (a)(1) of this

section, as a shipment of steel made within the 120-day period was properly found to have been furnished on the barge builder's existing credit account; the district court credited testimony showing that the final delivery was not a one-time, prepaid shipment. Falcon Steel, Inc. v. J. Russell Flowers, Inc., 635 F.3d 369 (8th Cir. 2011).

18-44-118. Filing of bond in contest of lien.

(a)(1) In the event any person claiming a lien for labor or materials upon any property shall file such a lien within the time and in the manner required by law with the circuit clerk or other officer provided by law for the filing of such a lien, and if the owner of the property, any mortgagee or other person having an interest in the property, or any contractor, subcontractor, or other person liable for the payment of such a lien shall desire to contest the lien, then the person so desiring to contest the lien may file:

(A) With the circuit clerk or other officer with whom the lien is filed as required by law a bond with surety, to be approved by the officer in the amount of the lien claimed; or

(B) An action under subsection (f) of this section to protest the filing of the lien.

(2) The bond shall be conditioned for the payment of the amount of the lien, or so much of the lien as may be established by suit, together with interest and the costs of the action, if upon trial it shall be found that the property was subject to the lien.

(b)(1)(A) Upon the filing of the bond, if the circuit clerk or other officer before whom it is filed approves the surety, he or she shall give to the person claiming the lien, at his or her last known address, three (3) days' notice of the filing of the bond.

(B) The notice shall be in writing and served by any:

(i) Officer authorized by law to serve process in a civil action; or

(ii) Form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee.

(2)(A) Within the three (3) days' notice, the person claiming the lien may appear and question the sufficiency of the surety or form of the bond.

(B) At the expiration of three (3) days, if the person claiming the lien shall not have questioned the sufficiency of the bond or surety or if the circuit clerk finds the bond to be sufficient, the circuit clerk shall note the filing of the bond upon the margin of the lien record and the lien shall then be discharged and the claimant shall have recourse only against the principal and surety upon the bond.

(c)(1) If no action to enforce the lien shall be filed within the time prescribed by law for the enforcement of a lien against the surety, the bond shall be null and void.

(2) However, if any action shall be timely commenced, the surety shall be liable in like manner as the principal.

(d) If the circuit clerk shall determine that the bond tendered is insufficient, the person tendering the bond shall have twenty-four (24)

hours within which to tender a sufficient bond, and unless a sufficient bond shall be so tendered, the lien shall remain in full force and effect.

(e)(1) Any party aggrieved by the acceptance or rejection of the bond may apply to any court of competent jurisdiction by an action which is appropriate.

(2) Upon notice as required by law, the court shall have jurisdiction to enter an interlocutory order as may be necessary for the protection of the parties by:

(A) Requiring additional security for the bond;

(B) Reinstating the lien in default of the bond, pending trial and hearing; or

(C) Requiring acceptance of the bond as may be necessary for the protection of the parties.

(f)(1) A protest under subdivision (a)(1)(B) of this section shall be filed as a civil action in the circuit court of the county where the lien is filed.

(2) The issues in the action shall be limited to whether:

(A) The lien was filed in the form required by § 18-44-117; and

(B) All of the applicable requirements of §§ 18-44-114 and 18-44-115 were satisfied.

(3)(A) The summons shall be in customary form directed to the sheriff of the county in which the action is filed, with directions for service of the summons on the named defendants. In addition, the clerk of the circuit court shall issue and direct the sheriff to serve upon the named defendants a notice in the following form:

"NOTICE OF INTENTION TO DISCHARGE LIEN

You are hereby notified that the attached complaint in the above-styled cause claims that you have not satisfied the requirements for claiming a lien upon the property described in the complaint and seeks to have the lien discharged by the court. If, within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, you have not filed in the office of the clerk of this court a written objection to the claims made against you by the plaintiff, then an order discharging the lien shall be issued immediately by the court. If you should file a written objection to the allegations of the complaint of the plaintiff within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, a hearing will be scheduled by the court to determine whether or not the lien should be discharged."

(B) If within five (5) days, excluding Sundays and legal holidays, following service of the summons, complaint, and notice the defendant or defendants have not filed a written objection to the claim of the plaintiff, the court shall immediately issue an order discharging the lien upon the property described in the complaint.

(C) If a written objection to the claim of the plaintiff is filed by the defendant or defendants within five (5) days from the date of service

of the notice, summons, and complaint, the plaintiff shall obtain a date for the hearing of the plaintiff's complaint and shall give notice of the date, time, and place of the hearing to all defendants.

(4)(A) The action shall be heard as expeditiously as the business of the circuit court permits.

(B) Evidence may be presented by affidavit, subject to Rule 56(e),(f), and (g) of the Arkansas Rules of Civil Procedure.

(5) If the circuit court finds that the lien was not in the form required by § 18-44-117 or that the applicable requirements of §§ 18-44-114 and 18-44-115 were not satisfied, then the circuit court shall enter an order discharging the lien.

(6) The prevailing party shall be entitled to a reasonable attorney's fee and the costs of the protest.

(g) Nothing in this section shall be construed to limit the right of an owner, mortgagee, or any other person with an interest in the property to contest the lien by declaratory judgment proceedings under § 16-111-101 et seq.

History. Acts 1963, No. 66, § 2; A.S.A. 1947, § 51-641; Acts 2005, No. 2287, § 2; 2009, No. 454, § 3.

Amendments. The 2009 amendment, in (a)(1), inserted (a)(1)(B) and redesignated the remaining text accordingly; inserted "circuit" in (d); inserted (f) and redesignated the subsequent subsection; and made related changes.

CASE NOTES

In General.

Trial court did not err in granting contractor's motion to dismiss subcontractor's action, based on a forum selection clause, and in dismissing subcontractor's unjust enrichment claim against property developer because subcontractor's lien was untimely under the 120-day time limit provided in § 18-44-117 and, thus, the lien was not perfected and the complaint could not have been an in rem action; further, once the contractor posted a bond pursuant to this section, the lien had been discharged. Servewell Plumbing, LLC v. Summit Contrs., Inc., 362 Ark. 598, 210 S.W.3d 101 (2005).

18-44-119. Limitation of actions.

(a) All actions under this subchapter shall be commenced within fifteen (15) months after filing the lien and prosecuted without unnecessary delay to final judgment.

(b) No lien shall continue to exist by virtue of the provisions of this subchapter for more than fifteen (15) months after the lien is filed, unless within that time:

(1) An action shall be instituted as described in this subchapter; and

(2) A lis pendens is filed under § 16-59-101 et seq.

History. Acts 1895, No. 146, § 15, p. 217; 1899, No. 182, § 1, p. 322; C. & M. Dig., § 6926; Pope's Dig., § 8888; A.S.A. 1947, § 51-616; Acts 2005, No. 2287, § 4.

18-44-122. Contents of complaint.

The complaint, among other things, shall allege the facts necessary for securing a lien under this subchapter and shall contain a description of the property to be charged with the lien.

History. Acts 1895, No. 146, § 13, p. 217; C. & M. Dig., § 6927; Pope's Dig., § 8889; A.S.A. 1947, § 51-617; Acts 2009, No. 454, § 4.

Amendments. The 2009 amendment substituted "complaint" for "petition."

18-44-127. Trial and judgment.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Contract Law 27 U. Ark. Little Rock L. Rev. 665.

CASE NOTES

Cited: RMP Rentals v. Metroplex, Inc., 356 Ark. 76, 146 S.W.3d 861 (2004); Concrete Wallsystems of Ark., Inc. v. Master Paint Indus. Coating Corp., 95 Ark. App. 21, 233 S.W.3d 157 (2006).

18-44-128. Attorney's fee.

(a) When any contractor, subcontractor, laborer, or material supplier who has filed a lien, as provided for in this chapter, gives notice thereof to the owner of property by any method permitted under § 18-44-115(f)(3) and the claim has not been paid within twenty (20) days from the date of service of the notice, and if the contractor, subcontractor, laborer, or material supplier is required to sue for the enforcement of his or her claim, the court shall allow the successful contractor, subcontractor, laborer, or material supplier a reasonable attorney's fee in addition to other relief to which he or she may be entitled.

(b) If the owner is the prevailing party in the action, the court shall allow the owner a reasonable attorney's fee in addition to any other relief to which the owner may be entitled.

History. Acts 1961, No. 240, § 1; A.S.A. 1947, § 51-639; Acts 1995, No. 1298, § 9; 2009, No. 454, § 5.

Amendments. The 2009 amendment added (b), and redesignated and rewrote the remaining text.

CASE NOTES

Analysis

Denial Proper.
Prevailing Party.

Denial Proper.

Trial court did not err in denying a construction company's request for attorney's fees as the successful party in its lien-foreclosure action against property owners as the company had a full and fair opportunity in the arbitration proceedings to litigate the issue of attorney's fees, and the fact that the company submitted its

disputes to arbitration implied an agreement to be bound by the arbitrator's decision. Except in certain limited situations, a valid and final award by an arbitrator had the same effect under the rules of res judicata as the judgment of a court. Bell-Corley Constr., LLC v. Orange State Realty, Inc., 2011 Ark. App. 289, — S.W.3d — (2011).

Prevailing Party.

Where Corporation filed a materialman's lien against a contractor when the contractor withheld a retainage because of the alleged poor quality of the corporation's work, the contractor was entitled to attorney's fees as the prevailing party because the contractor was awarded three-fourths of the money at issue. CJ Bldg. Corp. v. TRAC-10, 368 Ark. 654, 249 S.W.3d 793 (2007).

Cited: Hickman v. Kralicek Realty & Constr. Co., 84 Ark. App. 61, 129 S.W.3d 317 (2003).

18-44-133, 18-44-134. [Repealed.]

Publisher's Notes. These sections, concerning lien of architect, engineer, surveyor, appraiser, abstractor, or title insurance agent, and landscaping services and supplies, were repealed by Acts 2009, No. 454, § 6. The sections were derived from the following sources:

18-44-133: Acts 1987, No. 1035, § 1; 1991, No. 786, § 30.

18-44-134: Acts 1995, No. 1298, § 11.

18-44-135. Jointly owned property.

CASE NOTES

Cited: Hickman v. Kralicek Realty & Constr. Co., 84 Ark. App. 61, 129 S.W.3d 317 (2003).

Subchapter 5 — Bonds

18-44-503. Public buildings and improvements.

CASE NOTES

Noncompliance.

Trial court properly ruled in favor of a contractor and its president on a steel company's fraud claim because the company could not make out a claim of fraud for failure to obtain a payment bond under subsection (a) of this section as the company did not determine that there was not a bond until after it had provided supplies to the contractor. Alliance Steel, Inc. v. TNT Constr., Inc., 2009 Ark. App. 405, 322 S.W.3d 501 (2009).

CHAPTER 45

ARTISAN'S AND REPAIRMEN'S LIENS

SUBCHAPTER.

3. — Electrical Repairmen.

Subchapter 2 — Blacksmiths, Vehicle Repairmen, Etc.

18-45-201. Right to absolute lien.

CASE NOTES

Possession.

In an owner's action seeking recovery of an all-terrain vehicle (ATV), a monetary award in favor of a wrecker service was erroneous because the wrecker service's liens under this section and § 18-45-402 were satisfied upon receipt of the sum generated from the sale of the ATV and its lack of perfection of its lien under § 27-50-1208 precluded a finding of a possessory lien. Payne v. Donaldson, 2010 Ark. App. 255, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 355 (Apr. 21, 2010).

Subchapter 3 — Electrical Repairmen

SECTION.

18-45-305. Enforcement of lien if possession not retained.

(a) If the lienholder has voluntarily parted with possession of any property upon which he or she has a lien under the provisions of this subchapter, he or she may still avail himself or herself of a lien by filing a just and true itemized account within ninety (90) days after the work or labor is performed or material furnished with the clerk of the circuit court of the county in which the property is located.

(b) The clerk of the circuit court shall file the account and make an abstract of it in the proper lien record book, and the clerk may charge a fee of twenty-five cents (25¢) for the service.

(c)(1) The lien provided for in this subchapter may be enforced at any time within ninety (90) days after the filing of the lien.

(2) The enforcement of such liens shall be by suits in the circuit court of the county in which the property is located.

History. Acts 1939, No. 61, § 3; A.S.A. 1947, § 51-415.

Publisher's Notes. This section is being set out to update references to chancery courts, which are now abolished, in subsections (a) and (c).

Subchapter 4 — Cleaners, Launderers, Etc.

18-45-402. Priority.

CASE NOTES

Possession.

In an owner's action seeking recovery of an all-terrain vehicle (ATV), a monetary award in favor of a wrecker service was erroneous because the wrecker service's liens under § 18-45-201 and this section were satisfied upon receipt of the sum generated from the sale of the ATV and its lack of perfection of its lien under § 27-50-1208 precluded a finding of a possessory lien. Payne v. Donaldson, 2010 Ark. App. 255, — S.W.3d — (2010), rehearing

denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 355 (Apr. 21, 2010).

CHAPTER 46

MEDICAL, NURSING, HOSPITAL, AND AMBULANCE SERVICE LIEN ACT

SECTION.

18-46-102. Definitions.

As used in this chapter:

(1) "Ambulance service provider" means a provider that renders services as defined in § 14-266-103(1) and (2);

(2) "Claim" means the claim of a patient:

(A) For damages from a tortfeasor; or

(B) For benefits from an insurer;

(3) "Hospital" means a person that maintains an establishment in which sick and injured persons are given medical and surgical care;

(4) "Injury" means impairment of bodily, nervous, or mental integrity or health;

(5) "Insurer" means a person that by a contract of insurance has undertaken to indemnify a patient against loss through injury resulting from accident or accidental means;

(6) "Patient" means a person injured through the fault or neglect of another person, for the relief or cure of whose injury a practitioner, nurse, or hospital renders service;

(7) "Person" means a natural person, a partnership, an association, or a corporation;

(8) "Practitioner" means a person licensed to:

(A) Treat human ailments under the provisions of § 17-95-202 et seq.;

(B) Practice dentistry as defined in § 17-82-102;

(C) Practice chiropractic under the provisions of the Arkansas Chiropractic Practices Act, § 17-81-101 et seq.;

(D) Practice massage therapy under the Massage Therapy Act, § 17-86-101 et seq.; and

(E) Practice physical therapy under the Arkansas Physical Therapy Act, § 17-93-101 et seq.;

(9) "Service" means personal service, food, lodging, ambulance service, medical supplies and appliances, and whatever else is reasonably necessary for the care, treatment, and maintenance of a patient; and

(10) "Tortfeasor" means a person through whose fault or neglect a person is injured.

History. Acts 1933, No. 130, § 1; Pope's Dig., §§ 7989, 10818; Acts 1971, No. 194, § 1; A.S.A. 1947, § 51-801; Acts 1991, No. 1156, § 1; 1993, No. 271, § 2; 2001, No. 363, § 1; 2005, No. 1671, § 1.

18-46-105. Notice required — Contents — Service — Amendments and supplements.

CASE NOTES

Recovery from Debtor's Bankruptcy Estate.

Health center that filed a lien, pursuant to subdivision (1)(A) of this section, to recover the costs of services it provided to a debtor before the debtor declared Chapter 13 bankruptcy was entitled to recover its costs because the lien was in effect on the date the debtor declared bankruptcy and 11 U.S.C.S. § 108(c) tolled the time period the health center had under § 18-46-106(a) to enforce its lien. The health center had 30 days after it received notice of the termination or expiration of the automatic stay to enforce its lien, and it did that by filing a claim against the debtor's bankruptcy estate. In re Miller, 444 B.R. 177 (Bankr. E.D. Ark. 2011).

18-46-106. Liens void after certain day unless action commenced.

CASE NOTES

Analysis

Effect of Failure to Obtain Lien.
Recovery from Debtor's Bankruptcy Estate.

Effect of Failure to Obtain Lien.

Hospital's failure to follow procedures set forth in the lien statute under this section did not extinguish a hospital debt or the hospital's right to collect for medical services; it simply resulted in the hospital not being able to assert a lien. Alvarado v. St. Mary-Rogers Mem. Hosp., Inc., 99 Ark. App. 104, 257 S.W.3d 583 (2007).

Recovery from Debtor's Bankruptcy Estate.

Health center that filed a lien, pursuant to § 18-46-105(1)(A), to recover the costs of services it provided to a debtor before the debtor declared Chapter 13 bankruptcy was entitled to recover its costs because the lien was in effect on the date the debtor declared bankruptcy and 11 U.S.C.S. § 108(c) tolled the time period the health center had under subsection (a) of this section to enforce its lien. The health center had 30 days after it received notice of the termination or expiration of the automatic stay to enforce its lien, and it did that by filing a claim against the debtor's bankruptcy estate. In re Miller, 444 B.R. 177 (Bankr. E.D. Ark. 2011).

CHAPTER 48

MISCELLANEOUS LIENS ON PERSONAL PROPERTY

SUBCHAPTER.

3. — Animals — Services of Male Animal.
8. — Principal Broker Real Estate Lien Act.

Subchapter 3 — Animals — Services of Male Animal

18-48-302. Penalty for sale, exchange, removal, or disposition of female animal.

Upon the sale, exchange, removal, or disposition of a female animal described in § 18-48-301 without consent of the person holding the lien or with intent to defraud him or her, the owner of the female animal shall be guilty of a violation and upon conviction shall be fined in any sum not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00).

History. Acts 1909, No. 252, § 1, p. 756; C. & M. Dig., § 6937; Pope's Dig., § 8899; A.S.A. 1947, § 51-905; Acts 2005, No. 1994, § 99.

Subchapter 8 — Principal Broker Real Estate Lien Act

18-48-801. Title.

This subchapter shall be known and may be cited as the "Principal Broker Real Estate Lien Act".

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Amendments. The 2011 amendment substituted "'Principal Broker Real Estate Lien Act'" for "'Real Estate Licensee Lien Act'."

18-48-802. Definitions.

As used in this subchapter:

(1)(A) "Base rent" means the rent designated in a lease as base rent, or a similar term, for the possession and use of commercial real estate.

(B) "Base rent" does not include separate payments made by tenants for insurance, taxes, utilities, or other expenses;

(2)(A) "Commercial real estate" means:

(i) A fee simple, freehold, leasehold, or other title, interest, or possessory estate in real property located in the State of Arkansas; and

(ii) Real property if the property is identified as commercial real estate in the representation agreement.

(B) "Commercial real estate" does not mean an interest in real property that is:

(i) Improved with one (1) single-family residential unit or one (1) multifamily structure with four (4) or fewer residential units; or

(ii) Improved with single-family residential units such as condominiums, townhouses, timeshares, or houses in a subdivision that may be sold, leased, or otherwise disposed of on a unit-by-unit basis;

(3) "Days" means calendar days;

(4) "Disposition" means a voluntary transfer or conveyance of commercial real estate;

(5) "Escrow closing agent" means the person or entity that receives documents and funds for recording and disbursement in the completion of a transaction for the disposition of commercial real estate;

(6) "Lease" means a written agreement affecting commercial real estate that creates a landlord and tenant relationship under which the holder of a fee simple interest or possessory estate in commercial real estate permits another to possess the commercial real estate for the period of time contained in the lease;

(7) "Licensee" means a licensee as defined in § 17-42-103;

(8)(A) "Net rental proceeds" means the base rent paid by the tenant under a lease less any amounts currently due under the terms of a lien that has priority over a lien created under this subchapter.

(B) Net rental proceeds are personal property to which a lien created by this subchapter attaches;

(9) "Owner" means a person or entity that is vested in record fee title or a possessory estate in commercial real estate;

(10)(A) "Owner's net proceeds" means the gross sales proceeds from the disposition of commercial real estate described in a notice of claim of lien against proceeds under this subchapter less:

(i) Amounts necessary to pay all encumbrances and liens that have priority over the lien created by this subchapter other than those permitted to remain by the buyer of the commercial real estate; and

(ii) Owner's closing costs, such as real estate excise tax, title insurance premiums, real estate tax and assessment prorations, and escrow fees required to be paid by the owner under an agreement with the buyer of the commercial real estate.

(B) "Owner's net proceeds" includes any gross sales proceeds that are:

(i) Held by a third party for purposes of completing an exchange of real estate which is deferred from federal income tax under Section 1031 of the Internal Revenue Code of 1986, as it existed on January 1, 2011, but are not used later for that purpose; and

(ii) Personal property to which a lien created by this subchapter attaches;

(11) "Principal broker" means a principal broker as defined in § 17-42-103;

(12) "Real property" means one (1) or more parcels or tracts of land, including an appurtenance or improvement; and

(13) "Representation agreement" means a commercial real estate agreement between a licensee and an owner under which the owner agrees to pay a licensee a fee, commission, or other consideration upon:

(A) Either the disposition or lease of commercial real estate; or

(B) Entering into an agreement for the disposition or lease of commercial real estate.

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Amendments. The 2011 amendment substituted "means a licensee as defined" for "has the same meaning as" in (7); and inserted present (11) and redesignated the remaining subdivisions accordingly.

U.S. Code. Section 1031 of the Internal Revenue Code of 1986, referred to in (10)(B)(i), is codified as 26 U.S.C. § 1031.

18-48-803. Lien upon personal property.

(a)(1) A principal broker has a lien in the amount that the owner has agreed to pay the principal broker or real estate firm under a representation agreement upon:

(A) The owner's net proceeds from the disposition of commercial real estate; and

(B) The net rental proceeds from the lease of commercial real estate.

(2) A lien created under subdivision (a)(1) of this section:

(A) Encumbers only personal property;

(B) Does not encumber real property; and

(C) May:

(i) Be asserted only by the principal broker identified in the representation agreement; and

(ii) Not be assigned voluntarily or by operation of law.

(b)(1) Subject to the requirements of subdivisions (b)(2) and (3) of this section, a lien created under subdivision (a)(1) of this section is:

(A) Effective on the date of the recording of a notice of claim of lien upon proceeds in accordance with subdivision (b)(2) of this section; and

(B) Perfected by recording the notice of claim of lien upon proceeds with the circuit clerk in the county or counties in which the commercial real estate is located.

(2)(A) A lien created as the result of a disposition of commercial real estate is not effective unless it is recorded before the deed conveying the commercial real estate is recorded in the office of the circuit clerk in the county or counties in which the commercial real estate is located.

(B) On or before the date the deed conveying the commercial real estate is recorded, the principal broker shall deliver a copy of the notice of claim of lien against proceeds to the escrow closing agent closing the disposition of commercial real estate in the manner provided in § 18-48-806 if the identity of the escrow closing agent is known by the principal broker.

(3) A lien created as the result of a lease of commercial real estate is:

(A) Not effective unless it is recorded within ninety (90) days after:

(i) The tenant takes possession of the leased commercial real estate; or

(ii) For a renewal of a lease of commercial real estate, the commencement date of the renewal lease term; and

(B) Null and void unless the principal broker delivers a copy of the notice of claim of lien against proceeds to the owner of the commercial real estate in the manner provided in § 18-48-806 within ten (10) days of recording the principal broker's notice of claim of lien against proceeds.

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Amendments. The 2011 amendment substituted "principal broker" for "licensee" throughout the section; substituted "principal broker or real estate firm" for "licensee" in (a)(1); subdivided (a)(2); substituted "encumbers only" for "Upon" in (a)(2)(A); substituted "Does not encumber" for "not upon" in (a)(2)(B); substituted "Be asserted only by the principal broker" for "Available only to the licensee" in (a)(2)(C)(i); substituted "§ 18-48-806" for "§ 18-48-807" in (b)(2)(B) and (b)(3)(B); deleted "actually" following "agent is" in (b)(2)(B); subdivided (b)(3)(A); substituted "within ninety (90) days after" for "before" in (b)(3)(A); and inserted (b)(3)(A)(ii).

18-48-804. Waiver of right to a lien — Action by principal broker.

(a) A principal broker may waive his or her right to a lien under this subchapter in the representation agreement.

(b) If a court finds that payment is due to the principal broker in an action to recover amounts due under a representation agreement in which the principal broker has waived his or her right to a lien, the court shall award actual damages, a reasonable attorney's fee, and expenses.

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Amendments. The 2011 amendment substituted "principal broker" for "licensee" in (a) and twice in (b).

18-48-805. Notice of claim of lien upon proceeds.

(a) A notice of claim of lien against proceeds shall state:

(1) The name, address, and telephone number of the principal broker;

(2) The date of the representation agreement;

(3) The name of the owner of the commercial real estate;

(4) The legal description of the commercial real estate as described in the representation agreement;

(5) The amount of the claimed lien expressed as either a specified sum, a percentage of the sales price, or a formula;

(6) The real estate license number of the principal broker;

(7) That the lien claimant has read the notice of claim of lien, knows its contents, and believes:

(A) The statements contained in the notice of claim of lien to be true and correct; and

(B) That the claim is made pursuant to a valid representation agreement and is not frivolous; and

(8) That the information contained in the notice of claim of lien is true and accurate to the knowledge of the signatory.

(b) The notice of claim of lien against proceeds shall be notarized.

(c) A copy of the representation agreement shall be attached to the notice of claim of lien against proceeds.

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Amendments. The 2011 amendment substituted "principal broker" for "licensee" in (a)(1) and (6).

18-48-806. Delivery of notice of claim of lien.

(a) Except for service of a complaint under § 18-48-807 or § 18-48-808, a notice required to be delivered to a party under this subchapter shall be delivered by:

(1) Any form of service of process permitted by Rule 4 of the Arkansas Rules of Civil Procedure;

(2) Registered or certified mail, return receipt requested; or

(3) Personal or electronic delivery and evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by or from the party to whom the notice is delivered.

(b) Delivery of the notice is effective at the time of:

(1) Personal service;

(2) Personal or electronic delivery; or

(3) Three (3) days after deposit in the mail.

(c)(1) Notice to a principal broker or owner of commercial real estate may be sent to:

(A) The address of the principal broker or owner that is provided in the representation agreement; or

(B) Any other address contained in a written notice from the principal broker or owner to the party giving the notice.

(2) If no address can be found under the provisions of subdivision (c)(1) of this section, the notice may be given to:

(A) The principal broker at his or her most recent address of record with the Arkansas Real Estate Commission; and

(B) The owner at the address of the owner's commercial real estate.

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Amendments. The 2011 amendment, in the introductory language of (a), substituted "a complaint under § 18-48-807 or § 18-48-808" for "process as required in a civil action subject to the Arkansas Rules of Civil Procedure," inserted "required," and inserted "delivered" following "shall be"; substituted "Any form of service of process permitted by Rule 4 of the Arkansas Rules of Civil Procedure" for "Service of process" in (a)(1); deleted (a)(4); and substituted "principal broker" for "licensee" throughout (c).

18-48-807. Release of notice of claim of lien.

(a) If a principal broker records a notice of claim of lien against proceeds and knows or learns that he or she is not entitled to receive compensation under the terms of the representation agreement, the principal broker shall record a written release of the notice of claim of lien against proceeds within five (5) days after:

(1) Demand by the owner of the commercial real estate; or

(2) Learning that the principal broker is not entitled to receive compensation under the terms of the representation agreement.

(b) If the amount claimed in the notice of claim of lien has been paid, a lien claimant shall promptly record a satisfaction or release of the notice of claim of lien within five (5) days after receipt of payment of the amount claimed in the notice of claim of lien.

(c)(1) In a disposition of commercial real estate, the escrow closing agent shall pay to the lien claimant the owner's net proceeds up to the amount claimed in the notice of claim of lien against proceeds.

(2) If the amount claimed in the notice of claim of lien is to be fully or partially paid to the lien claimant by the escrow closing agent upon disposition, the lien claimant shall submit a release of his or her notice of claim of lien against proceeds to the escrow closing agent who shall hold the release in escrow pending disposition and payment.

(d)(1)(A) A notice of claim of lien against proceeds recorded under this subchapter shall be released upon the recording of a receipt by the office in which the notice of claim of lien was recorded that shows a deposit of an amount equal to the lien claimed.

(B) The deposit shall be held pending a resolution of amounts due to the licensee and the owner.

(2) If the court determines in an action by the owner to compel delivery of the release by the lien claimant that the delay in providing the release was unjustified, the court shall:

(A) Order the release of the notice of claim of lien; and

(B) Award the owner the costs of the action, including a reasonable attorney's fee.

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Amendments. The 2011 amendment subdivided (a); in (a)(1), substituted "principal broker" for "licensee" twice and inserted "or learns"; inserted (a)(2); and inserted "the owner" in (d)(2)(B).

18-48-808. Disputed claim — Order to show cause.

(a)(1) An owner of commercial real estate may dispute a recorded notice of claim of lien against proceeds filed under this subchapter by filing a complaint in the circuit court of the county where the commercial real estate or a portion of the commercial real estate is located for an order directing the principal broker to appear before the court and show cause why a release of the notice of claim of lien against proceeds should not be granted.

(2) If after a hearing, a court determines that the owner is:

(A) Not obligated to pay the principal broker a commission under the terms of a representation agreement, it shall issue an order:

(i) Releasing the notice of claim of lien against proceeds; and

(ii) Awarding costs and a reasonable attorney's fee to the owner; or

(B) Obligated to pay the principal broker a commission under the terms of a representation agreement, the court shall issue an order awarding costs and a reasonable attorney's fee to the licensee.

(b)(1) A principal broker who has a lien on net rental proceeds under § 18-48-803, has recorded a notice of claim of lien against proceeds, and has complied with the requirements of this subchapter may file a complaint in the circuit court of the county where the commercial real estate or a portion of the commercial real estate is located for an order directing the owner to appear before the court and show cause why the relief requested in the complaint should not be granted.

(2) If after a hearing, the court determines that the owner is:

(A) Obligated to pay the principal broker a commission under the terms of a representation agreement, the court shall:

(i) Issue an order enjoining the owner from paying the net rental proceeds from the lease to any party other than the principal broker;

(ii) Order the owner to pay the net rental proceeds to the principal broker; and

(iii) Award a reasonable attorney's fee and expenses to the principal broker; or

(B) Not obligated to pay the licensee a commission under the terms of a representation agreement, the court shall issue an order awarding a reasonable attorney's fee and expenses to the owner.

(c)(1) A complaint authorized by subsection (a) or subsection (b) of this section is barred if not filed within twelve (12) months of the date that the notice of claim of lien against proceeds was recorded.

(2) A proceeding under this section shall not affect other rights and remedies available to the parties under this subchapter or otherwise.

History. Acts 2005, No. 1944, § 1; 2011, No. 340, § 1.

Amendments. The 2011 amendment substituted "principal broker" for "licensee" throughout the section; in (a)(1), deleted "or a licensee who has a lien on net proceeds under § 18-48-803, has recorded a notice of claim of lien against proceeds, and has complied with the requirements of this subchapter" following the first occurrence of "real estate"; and substituted "is barred if not filed" for "shall be filed" in (c)(1).

18-48-809. Priority of lien claims.

If perfected prior to the recording of a notice of claim of lien against proceeds, the following liens have priority over a lien created under this subchapter:

(1) Statutory liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing under statutory liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, whether voluntary or obligatory; and

(2) Modifications, extensions, renewals, and replacements to any of the liens listed in subdivision (1) of this section.

History. Acts 2005, No. 1944, § 1.

A.C.R.C. Notes. Section 18-48-809 was omitted from Acts 2011, No. 340, which purported to amend the entire subchapter. A.C.R.C. has determined that it was not the intent to repeal § 18-48-809 and its omission was likely a clerical error.

CHAPTER 49

ENFORCEMENT OF MORTGAGES, DEEDS OF TRUST, AND VENDORS' LIENS

18-49-101. Limitation of actions.

CASE NOTES

Applicability.

Farm Service Agency was entitled to recovery on three defaulted notes because it filed suit within the applicable limitations period established by 28 U.S.C.S. § 2415(a); the limitations period under Arkansas law established under this section was inapplicable to such a lawsuit. United States v. FJN Contrs., Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 90278 (W.D. Ark. Sept. 30, 2009).

18-49-103. Judgment.

CASE NOTES

Analysis

In General.
Sale Required.

In General.

This section provides for the sale of the property subject to a mortgage, not the execution of a deed. Born v. Hodges, 101 Ark. App. 139, 271 S.W.3d 526 (2008).

Sale Required.

Trial court erred when entering a default judgment in a foreclosure action because it ordered a buyer to quitclaim a deed to property to two sellers to satisfy a mortgage; there was no authority to do such under this section. Born v. Hodges, 101 Ark. App. 139, 271 S.W.3d 526 (2008).

18-49-104. Sale of property under court order and publication of notice of sales.

CASE NOTES

Cited: Almobarak v. McCoy, 84 Ark. App. 152, 137 S.W.3d 440 (2003).

CHAPTER 50

STATUTORY FORECLOSURES

18-50-101. Definitions.

As used in this chapter:

(1) "Beneficiary" means the person named or otherwise designated in a deed of trust as the person for whose benefit a deed of trust is given or his or her successor in interest;

(2) "Deed of trust" means a deed conveying real property in trust to secure the performance of an obligation of the grantor named in the deed or an obligor that is secured by the deed of trust to a beneficiary and conferring upon the trustee a power of sale for breach of an obligation of the grantor or obligor contained in the deed of trust;

(3) "Grantor" means the person conveying an interest in real property by a mortgage or deed of trust as security for the performance of an obligation secured by the mortgage or deed of trust;

(4) "Mortgage" means the grant of an interest in real property to be held as security for the performance of an obligation by the mortgagor or other person;

(5) "Mortgage company" means any private, state, or federal entity that in the usual course of its business is either the mortgagee or beneficiary of a deed of trust or mortgage;

(6) "Mortgage loan servicer" means an entity that holds itself out as being able to service loans secured by liens or mortgages encumbering real property;

(7) "Mortgagee" means the person holding an interest in real property as security for the performance of an obligation secured by a mortgage or his or her attorney-in-fact appointed pursuant to this chapter;

(8) "Mortgagor" means the person granting an interest in real property as security for the performance of an obligation secured by a mortgage;

(9) "Obligor" means a person owing an obligation that is secured by a mortgage or deed of trust;

(10) "Sale" means the public auction conducted pursuant to § 18-50-107;

(11) "Trust property" means the property encumbered by a mortgage or deed of trust; and

(12) "Trustee" means any person or legal entity to whom legal title to real property is conveyed by deed of trust or his or her successor in interest.

History. Acts 1987, No. 53, § 1; 1989, No. 532, § 1; 1999, No. 983, § 1; 2011, No. 885, § 1; 2011, No. 901, § 1.

Amendments. The 2011 amendment by No 885 inserted "or her" in (1); in (2), deleted "or any other person" preceding "named in the deed," inserted "or an obligor that is secured by the deed of trust," and inserted "or obligor"; added "secured by the mortgage or deed of trust" in (3); inserted "secured by a mortgage" in (6) and (7); added (8) and redesignated the remaining subdivisions accordingly; and deleted "and shall be deemed concluded when the highest bid is accepted by the person conducting the sale" at the end of present (9).

The 2011 amendment by No. 901 inserted "or her" in (1); in (2), deleted "or any other person" preceding "named in the deed," inserted "or an obligor that is secured by the deed of trust," and inserted "or obligor"; inserted "secured by the mortgage or deed of trust" in (3); inserted "secured by a mortgage" in (6); inserted present (6) and (9) and redesignated the remaining subdivisions accordingly; and deleted "and shall be deemed concluded when the highest bid is accepted by the person conducting the sale" at the end of present (10).

CASE NOTES

Sale.

Bankruptcy debtor was entitled to cure a mortgage default under 11 U.S.C.S. § 1322(c)(1) where the foreclosure sale was not completed before debtor's bankruptcy, even though subdivision (8) of this section deemed the sale complete upon bid acceptance which occurred prior to the debtor's bankruptcy, since a sale under bankruptcy law required an irrevocable transfer of the property through the completed foreclosure process; under state law, after bid acceptance the foreclosure trustee could reject the bid up to the time of delivery of the trustee's deed for any reason and the successful bidder's right to possession could not be enforced until the deed was recorded, and thus the sale was not complete until the trustee's deed was delivered and recorded. In re Jenkins, 422 B.R. 175 (Bankr. E.D. Ark. 2010).

18-50-102. Parties authorized to foreclose mortgage or deed of trust.

(a) Parties authorized to foreclose a mortgage or deed of trust under this chapter are limited to:

(1) A trustee or attorney-in-fact who is an active licensed member of the Bar of the Supreme Court of the State of Arkansas or a law firm among whose members includes such an attorney if the attorney or law firm maintains an office that:

(A) Is located within this state;

(B) Is accessible to the public during regular business hours; and

(C) Has the ability to accept funds from a grantor, mortgagor, or obligor to reinstate or pay off a mortgage or deed of trust;

(2) A state-chartered bank, nationally chartered bank, state-chartered or federally chartered savings and loan association, state-chartered or federally chartered credit union, or a mortgage loan company subject to licensing, supervision, and auditing by a federal agency, a government-sponsored enterprise, and the Bank Commissioner or Securities Commissioner, as applicable, as an approved mortgage loan servicer authorized to do business under the laws of the State of Arkansas if the state-chartered bank, nationally chartered bank, state-chartered or federally chartered savings and loan association, state-

chartered or federally chartered credit union, or mortgage loan company:

(A) Has a physical business location open for business for normal banking hours located within the State of Arkansas;

(B) Is either the holder or the mortgage loan servicer for the holder of a note secured by a mortgage or deed of trust; and

(C) Does not collect a fee or cost for any action taken under this chapter unless authorized by a court order; or

(3) An agency or authority of the State of Arkansas where not otherwise prohibited by law.

(b)(1) The beneficiary may appoint a successor trustee at any time by filing a substitution of trustee for record with the recorder of the county in which the trust property is situated.

(2) The new trustee shall succeed to all the power, duties, authority, and title of the original trustee and any previous successor trustee.

(3) The beneficiary, by express provision in the substitution of a trustee, may ratify and confirm actions taken on its behalf by the new trustee prior to the recording of the substitution of the trustee.

(c) The substitution shall identify the deed of trust by stating the names of the original parties thereto, the date of recordation, and the book and page where recorded or the recorder's document number. The substitution shall also state the name of the new trustee and shall be executed and duly acknowledged by all the beneficiaries or their successors in interest.

(d) A mortgagee may delegate his or her powers and duties under this chapter to an attorney-in-fact, whose acts shall be done in the name of and on behalf of the mortgagee.

(e) The appointment of an attorney-in-fact by a mortgagee shall be made by a duly executed, acknowledged, and recorded power of attorney that shall identify the mortgage by stating the names of the original parties thereto, the date of recordation, and the book and page where recorded or the recorder's document number.

(f) A substitution of trustee or power of attorney shall be recorded before any trustee's or mortgagee's deed executed by the substituted trustee or attorney-in-fact is recorded.

History. Acts 1987, No. 53, § 2; 1989, No. 532, § 2; 1999, No. 983, § 2; 2003, No. 1303, § 2; 2011, No. 901, § 2.

Amendments. The 2011 amendment rewrote (a); and deleted the former last sentence in (d).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Property Law, Statutory Foreclosure Law, 26 U. Ark. Little Rock L. Rev. 459.

18-50-103. Conditions to exercise of power of sale.

A beneficiary or mortgagee may not initiate a foreclosure under this chapter unless:

(1) The deed of trust or mortgage is filed for record with the recorder of the county in which the trust property is situated;

(2)(A) The beneficiary or mortgagee:

(i) Has personal knowledge of the records and information provided under this subdivision (2); and

(ii) At least ten (10) days before initiating the foreclosure has provided by standard mail to the grantor, mortgagor, or obligor at the address of the property encumbered by the mortgage or deed of trust or the mailing address of the grantor, mortgagor, or obligor:

(a) A true and correct copy of the note with all required endorsements, the mortgage, or the deed of trust;

(b) The name of the holder and the physical location of the original note;

(c) A true and correct copy of the original mortgage or deed of trust and if in the possession of the beneficiary or mortgagee, each assignment or allonge of the mortgage or deed of trust;

(d) Information, including the applicable telephone number and Internet address, regarding the availability to the grantor, mortgagor, or obligor of each program for loan modification assistance or forbearance assistance offered:

(1) Solely by the beneficiary or the mortgagee; or

(2) By a government agency if the beneficiary or mortgagee participates in the government agency's program; and

(e) If the default is the result of the failure to make payment, a payment history showing the date of default.

(B) If a true and correct copy of the original note, mortgage, deed of trust, or an assignment or allonge of the note, mortgage, or deed of trust is lost or otherwise unavailable, the beneficiary or mortgagee may, instead of providing true and correct copies of the note, mortgage, deed of trust, or assignment or allonge of the note, mortgage, or deed of trust, provide a statement that the document is lost or otherwise unavailable, and shall recite the good faith efforts the beneficiary or mortgagee has made to locate the document.

(C) The duties of the beneficiary or mortgagee to provide information under subdivision (2) of this section are not delegable to the beneficiary's trustee or the mortgagee's attorney-in-fact;

(3) There is a default by the mortgagor, grantor, or obligor with respect to any provision in the mortgage or deed of trust that authorizes sale in the event of default of the provision; and

(4) No action has been instituted to recover the debt or any part of it secured by the mortgage or deed of trust or, if such action has been instituted, the action has been dismissed.

History. Acts 1987, No. 53, § 3; 1999, No. 983, § 3; 2011, No. 885, § 2.

Amendments. The 2011 amendment, in the introductory language, substituted

"beneficiary" for "trustee" and substituted "initiate a foreclosure under this chapter" for "sell the trust property"; inserted (2), deleted former (3) and (5), and redesignated the remaining subdivisions accordingly; and rewrote present (3).

CASE NOTES

Notice of Default.

Strictly construing non-judicial foreclosure law, the court set aside the sale of certain real property as the bank failed to include the correct address in the notice of default; thus, the notice failed to satisfy the requirements of § 18-50-104(a)(2), and sale was not authorized pursuant to this section. In re Gatlin, 357 B.R. 519 (Bankr. W.D. Ark. 2006).

18-50-104. Prerequisites for foreclosure sale — Contents of notice of sale — Persons to receive notice.

(a) The trustee or mortgagee may not sell the trust property unless:

(1) The mortgagee, trustee, or beneficiary has filed for record with the recorder of the county in which the trust property is situated a duly acknowledged notice of default and intention to sell containing the information required by subsection (b) of this section;

(2) A period of at least sixty (60) days has elapsed since the recording of the notice of default and intention to sell; and

(3)(A)(i) The beneficiary or mortgagee has certified to its trustee or attorney-in-fact under § 18-50-102 that each mortgagor, grantor, or obligor who applied for loan modification or forbearance assistance has been notified that the mortgagor, grantor, or obligor does not meet the criteria for loan modification or forbearance assistance under any program offered by:

(a) The beneficiary or mortgagee; or

(b) A government agency if the beneficiary or mortgagee participates in the government agency's program.

(ii) The notice shall be sent to the property address or mailing address of the mortgagor, grantor, or obligor by certified and first-class mail at least ten (10) business days before the sale.

(B) The duties of the beneficiary or mortgagee under subdivision (a)(3)(A) of this section are not delegable to the beneficiary's trustee or the mortgagee's attorney-in-fact.

(b) The mortgagee's or trustee's notice of default and intention to sell shall set forth:

(1) The names of the parties to the mortgage or deed of trust;

(2) A legal description of the trust property and, if applicable, the street address of the property;

(3) The book and page numbers where the mortgage or deed of trust is recorded or the recorder's document number;

(4) The default for which foreclosure is made;

(5) The mortgagee's or trustee's intention to sell the trust property to satisfy the obligation, including in conspicuous type a warning as follows: "YOU MAY LOSE YOUR PROPERTY IF YOU DO NOT TAKE IMMEDIATE ACTION";

(6) The time, date, and place of sale; and

(7) The name, address, and telephone number of the party initiating foreclosure.

(c) The mortgagee's or trustee's notice of default and intention to sell shall be mailed within thirty (30) days of the recording of the notice by certified mail, postage prepaid, and by first-class mail, postage prepaid, to the address last known to the mortgagee or the trustee or beneficiary of the following persons:

(1) The mortgagor, grantor, and obligor of the deed of trust;

(2) Any successor in interest to the mortgagor or grantor whose interest appears of record or whose interest the mortgagee or the trustee or beneficiary has actual notice;

(3) Any person having a lien or interest subsequent to the interest of the mortgagee or trustee when that lien or interest appears of record or when the mortgagee, the trustee, or the beneficiary has actual notice of the lien or interest; and

(4) Any person requesting notice, as provided in § 18-50-113.

(d) The disability, incapacity, or death of any person to whom notice must be given under this section shall not delay or impair in any way the mortgagee's or trustee's right to proceed with a sale, provided that the notice has been given in the manner required by this section to the guardian or conservator or to the administrator or executor, as the case may be.

History. Acts 1987, No. 53, § 4; 1999, No. 983, § 4; 2011, No. 885, § 3.

Amendments. The 2011 amendment inserted present (a) and (b)(7) and redesignated the remaining subsections accordingly; and inserted "and obligor" in present (c)(1).

CASE NOTES

Analysis

Due Process Guarantees.
Mailing of Notice.

Due Process Guarantees.

Debtor, who had defaulted on her mortgage, alleged that the notice provisions of § 18-50-104 failed to comport with due process requirements; however, there was no state action involved in the foreclosure procedure, and mere passage of the Arkansas Statutory Foreclosure Act did not mean that there was state action or state officials involved. Parker v. BancorpSouth Bank, 369 Ark. 300, 253 S.W.3d 918 (2007).

Mailing of Notice.

Strictly construing non-judicial foreclosure law, the court set aside the sale of certain real property as the bank failed to include the correct address in the notice of default; thus, the notice failed to satisfy the requirements of this section and sale was not authorized pursuant to § 18-50-103. In re Gatlin, 357 B.R. 519 (Bankr. W.D. Ark. 2006).

Reading this section and § 18-50-105 together, the U.S. Bankruptcy Court for the Western District of Arkansas, Texarkana Division, concluded that the notice that must be published in the newspaper, at the county courthouse, and on the internet is the notice of default and intention to sell and, therefore, must contain a legal description of the trust property and, if applicable, the street address of the property. In re Gatlin, 357 B.R. 519 (Bankr. W.D. Ark. 2006).

Cited: Ellis v. State Farm Bank, F.S.B., 2009 Ark. App. 569, — S.W.3d — (2009).

18-50-105. Publication of notice.

CASE NOTES

Content of Notice.

Reading § 18-50-104 and this section together, the U.S. Bankruptcy Court for the Western District of Arkansas, Texarkana Division, concluded that the notice that must be published in the newspaper, at the county courthouse, and on the internet is the notice of default and intention to sell and, therefore, must contain a legal description of the trust property and, if applicable, the street address of the property. In re Gatlin, 357 B.R. 519 (Bankr. W.D. Ark. 2006).

Cited: Ellis v. State Farm Bank, F.S.B., 2009 Ark. App. 569, — S.W.3d — (2009).

18-50-107. Manner of sale.

(a) The sale shall be held on the date and at the time and place designated in the notice of default and intention to sell, except that the sale shall:

(1) Be held between 9:00 A.M. and 4:00 P.M.;

(2) Be held either at the premises of the trust property or at the front door of the county courthouse of the county in which the trust property is situated; and

(3) Not be held on a Saturday, Sunday, or a legal holiday.

(b)(1)(A) Any person, including the mortgagee and the beneficiary, may bid at the sale.

(B) The trustee may bid for the beneficiary but not for himself or herself.

(2) The mortgagee or trustee shall engage a third party that is licensed to sell real estate under the Real Estate License Law, § 17-42-101 et seq., and licensed to act as an auctioneer under the Auctioneer's Licensing Act, § 17-17-101 et seq., to conduct the sale and act at the sale as the auctioneer.

(3) No bid shall be accepted that is less than two-thirds (⅔) of the entire indebtedness due at the date of sale.

(c)(1) The person conducting the sale may postpone the sale from time to time.

(2)(A) In every such case, notice of postponement shall be given by:

(i) Public proclamation thereof by that person; or

(ii) Written notice of postponement posted at the time and place last appointed for the sale.

(B)(i) No other notice of the postponement need be given unless the sale is postponed for longer than thirty (30) days beyond the date designated in the notice.

(ii) In that event, notice thereof shall be given pursuant to § 18-50-104.

(d) The sale is concluded when the highest bid is accepted by the person conducting the sale.

(e)(1) Unless otherwise agreed to by the trustee or mortgagee, the purchaser shall pay at the time of sale the price bid.

(2) Interest shall accrue on any unpaid balance of the price bid at the rate specified in the note secured by the mortgage or deed of trust.

(3) Within ten (10) days after the sale, the mortgagee or trustee shall execute and deliver the trustee's deed or mortgagee's deed to the purchaser.

(4) The mortgagee or beneficiary shall receive a credit on its bid for:

(A) The amount representing the unpaid principal owed;

(B) Accrued interest as of the date of the sale;

(C) Advances for the payment of taxes, insurance, and maintenance of the trust property; and

(D) Costs of the sale, including reasonable trustee's and attorney's fees.

(f)(1) The purchaser at the sale shall be entitled to immediate possession of the property.

(2)(A) Possession may be obtained by filing a complaint in the circuit court of the county in which the property is situated and attaching a copy of the recorded trustee's or mortgagee's deed, whereupon the purchaser shall be entitled to an ex parte writ of assistance.

(B) Alternatively, the purchaser may bring an action for forcible entry and detainer under § 18-60-301 et seq.

(C) In either event, the provisions of § 18-50-116(d) shall apply.

History. Acts 1987, No. 53, § 7; 1999, No. 983, §§ 6, 7; 2011, No. 885, § 4; 2011, No. 901, § 3.

Amendments. The 2011 amendment by No. 885 inserted present (d) and redesignated the remaining subsections accordingly; and substituted "is situated" for "lies" in present (f)(2)(A).

The 2011 amendment by No. 901 inserted "that is licensed to sell real estate under the Real Estate License Law, § 17-42-101 et seq., and licensed to act as an auctioneer under the Auctioneer's Licensing Act, § 17-17-101 et seq." in (b)(2); inserted present (d) and redesignated the remaining subsections accordingly; and substituted "is situated" for "lies" in present (f)(1).

18-50-111. Form and effect of trustee's or mortgagee's deed.

CASE NOTES

Cited: Ellis v. State Farm Bank, F.S.B., 2009 Ark. App. 569, — S.W.3d — (2009).

18-50-114. Reinstatement of mortgage or deed of trust.

CASE NOTES

Construction.

Summary judgment was properly granted in favor of defendant bank which failed to reinstate the mortgage of plaintiff couple; it was undisputed that the couple had failed to pay the entire amount of the past-due payments, late fees, and costs and expenses, including attorney's fees, before curing the default pursuant to subsection (a) of this section. Lambert v. Firstar Bank, N.A., 83 Ark. App. 259, 127 S.W.3d 523 (2003).

18-50-116. Miscellaneous provisions.

(a) The procedures set forth in this chapter for the foreclosure of a mortgage or deed of trust shall not impair or otherwise affect the right to bring a judicial action to foreclose a mortgage or deed of trust.

(b) A notice of default and intention to sell shall be filed within the time the foreclosure of the mortgage or deed of trust by judicial action could have been commenced.

(c) The procedures set forth in this chapter shall apply only if the mortgagee or beneficiary is a mortgage company as defined in § 18-50-101 or is a bank or savings and loan. This chapter shall not apply to a mortgage or a deed of trust encumbering trust property used primarily for agricultural purposes.

(d) Nothing in this chapter shall be construed to:

(1) Create an implied right of redemption in favor of any person; or

(2)(A) Impair the right of any person or entity to assert his or her legal and equitable rights in a court of competent jurisdiction.

(B) However, a claim or defense of a person or entity asserting his or her or its legal and equitable rights shall be asserted before the sale or it is forever barred and terminated, except that the mortgagor may assert the following against either the mortgagee or trustee:

(i) Fraud; or

(ii) Failure to strictly comply with the provisions of this chapter, including without limitation subsection (c) of this section.

(C)(i) The claims or defenses described in subdivision (d)(2)(B) of this section may not be asserted against a subsequent purchaser for value of the property.

(ii) For purposes of this section, "purchaser for value" does not include the mortgagee or the trustee.

(e)(1) At any time prior to the delivery of the trustee's or mortgagee's deed, the trustee or mortgagee shall be authorized to set aside a sale conducted pursuant to this chapter by declaring the sale null and void and returning the purchase price to the highest bidder without any further liability to the bidder.

(2) In this event, the trustee or mortgagee shall file an affidavit declaring the sale null and void with the recorder of the county in which the trust property is located, and all terms and provisions of the mortgage or deed of trust shall be revived and reinstated as if no sale had occurred.

History. Acts 1987, No. 53, § 16; 1989, No. 532, § 4; 1999, No. 983, §§ 11, 12; 2007, No. 721, § 1; 2009, No. 482, § 12.

Amendments. The 2007 amendment added "except the mortgagor may assert the following against either the mortgagee or trustee" at the end of (d)(2)(B); and added (d)(2)(B)(i) through (d)(2)(C).

The 2009 amendment, in (d)(2), inserted "of a person or entity asserting his or her or its legal and equitable rights" in (d)(2)(B), substituted "chapter" for "act" in (d)(2)(B)(ii), substituted "The claims or defenses described in subdivision (d)(2)(B) of this section" for "Any of the above claims or defenses" in (d)(2)(C)(i), and made minor stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Property Law, 27 U. Ark. Little Rock L. Rev. 739.

CASE NOTES

Analysis

In General.
Claims Barred.
Claims Not Barred.
Validity of Sale.

In General.

Although bankruptcy court had jurisdiction to determine what constituted property of the estate, in the interest of comity and pursuant to 28 U.S.C.S. § 1334(c)(1), it abstained from determining the state law issue of whether a nonjudicial foreclosure was valid under the Arkansas Statutory Foreclosure Act where irregularities in a foreclosure proceeding were subject to judicial review in state court under subsection (d) of this section. In re Starks, — B.R. —, 2005 Bankr. LEXIS 2508 (Bankr. E.D. Ark. Dec. 13, 2005).

Claims Barred.

Summary judgment was properly granted in favor of defendant bank which failed to reinstate the mortgage of plaintiff couple; it was undisputed that the couple had failed to pay the entire amount of the past-due payments, late fees, and costs and expenses, including attorney's fees, before curing the default pursuant to § 18-50-114(a) and the couple failed to sue the bank until after the sale of the property. Lambert v. Firstar Bank, N.A., 83 Ark. App. 259, 127 S.W.3d 523 (2003).

Dismissal of owner's petition to set aside a statutory foreclosure sale of property by the bank was affirmed because an assertion that the land to be foreclosed on was primarily used for agricultural purposes was precisely the kind of claim or defense that must be raised prior to the sale or be forever barred and terminated and the owner did not raise the agricultural-lands defense until well after the auction sale. Cockrell v. Union Planters Bank, 359 Ark. 8, 194 S.W.3d 178 (2004).

Claims Not Barred.

Where the legal description for a mortgage only specifically listed one of two lots, the mortgagee's claim that the proper interpretation of the mortgage was that it included both lots was not procedurally barred by subdivision (d)(2)(B) of this section as (1) § 16-111-103 gave courts the power to declare rights, status, and other legal relations whether or not relief was or could have been claimed, (2) § 16-111-104 provided that the mortgagee could obtain a declaration of its rights under the mortgage, and (3) because no third parties were involved, no individuals not a party to the action were prejudiced by allowing the mortgagee to proceed in obtaining an interpretation of the mortgage. Acuff v. CitiMortgage, Inc., — F. Supp.2d —, 2006 U.S. Dist. LEXIS 67978 (E.D. Ark. Sept. 21, 2006).

Validity of Sale.

Certain fees associated with the three foreclosures initiated by the creditor were not reasonable and therefore were disallowed. Because the creditor initiated the first foreclosure no later than February 27, 2009, and there was no evidence that it was the mortgagee before May 19, 2009, the first foreclosure would have been invalid under the Arkansas Statutory Foreclosure Act; the charges for the assignment of the mortgage were disallowed, as the assignment was not due to the debtors' default; and the fees charged for posting and cancellation of sale appeared to be exorbitant. In re Burrow, — B.R. —, 2011 Bankr. LEXIS 1092 (Bankr. E.D. Ark. Mar. 22, 2011).

Cited: Ellis v. State Farm Bank, F.S.B., 2009 Ark. App. 569, — S.W.3d — (2009).

18-50-117. Foreign corporations and other entities.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Property Law, Statutory Foreclosure Law, 26 U. Ark. Little Rock L. Rev. 459.

SUBTITLE 5. CIVIL ACTIONS

CHAPTER 60

MISCELLANEOUS PROCEEDINGS RELATING TO PROPERTY

SUBCHAPTER.

Subchapter 1 — General Provisions

18-60-102. Injuring, destroying, or carrying away property of another.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

CASE NOTES

Analysis

Conversion.

Conversion does not necessarily involve damage to property, which would bring it within the reach of the statute and therefore, the Civil Justice Reform Act of 2003 (CJRA), codified at §§ 16-55-201 — 16-55-220, does not automatically apply to actions under this section; the CJRA clearly evinces an intent to alter the common law regarding joint and several liability for the causes of action listed, such as personal injury or property damage, but it does not, however, display such an intent regarding causes of action involving the conversion of property, and thus, the trial court did not err in finding the company, owner, and related individual jointly and severally liable with the business and business owner and with each other for the value of the landowner's timber. Shamlin v. Quadrangle Enters., 101 Ark. App. 164, 272 S.W.3d 128 (2008).

Damages.

Appellate court affirmed the judgment in favor of plaintiff for defendant's trespass and destruction of marketable timber on plaintiff's land and the award of treble damages as two witnesses testified that a bulldozer was on plaintiff's property at the direction of defendant. Jackson v. Pitts, 93 Ark. App. 466, 220 S.W.3d 265 (2005).

Because both punitive damages and treble damages were not awarded against the company, owner, and related individual in the landowner's action under this section, they did not have standing to raise the issue on appeal. Shamlin v. Quadrangle Enters., 101 Ark. App. 164, 272 S.W.3d 128 (2008).

Trial court did not err in denying appellants a new trial or remittitur regarding a punitive damage award in favor of appellees, as the award was not in excess of federal due process standards, given that (1) appellees suffered economic harm, but the harm was much more than purely economic injury, as appellants cut down approximately 40 percent of appellees' future retirement homesite and the privacy afforded by the trees was very important to appellees, (2) appellants' action forced appellees to give up their plans to retire to the property and ultimately sell it, (3) the tree cutting was intentional and not an isolated incident, (4) the profit appellants received from the sale of their property was a direct result of the tree clearing on appellees' property, (5) the award was not so grossly excessive as to have violated federal due process, (6) each of appellants were on notice of and could have been charged with a Class C felony of criminal mischief under § 5-38-203(b)(1) with, under § 5-4-201(a)(2), a potential fine of $10,000, plus a violation of § 15-32-101(a)(1), (7) was a misdemeanor, with a potential fine and jail time, and (8) under subdivision (a)(1) of this section, appellants had ample notice that their actions could result in a penalty of $25,000 punitive damages. Bronakowski v. Lindhurst, 2009 Ark. App. 513, 324 S.W.3d 719 (2009), rehearing denied, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 669 (July 29, 2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 804 (Dec. 3, 2009).

Damages awarded for on the property owners' conversion claim were properly set at the value of the timber taken to $188.95, which was trebled under subdivision (a)(1) of this section, as the only credible evidence as to the value of the timber taken was the testimony of a timber company president estimating the value of at $188.95 since the owners presented only their own opinion as to the value of the trees taken. Pope v. Overton, 2011 Ark. 11, — S.W.3d — (2011).

Evidence.

In a trespass to timber action, a circuit court did not err in allowing the landowner's expert to testify as to the fair market value of all of the timber removed from the property, including that which was removed prior to the date the land was transferred to a trust, even though the landowner could not recover for timber removed prior to that date, because the evidence was relevant to prove defendants' wrongful conduct under Ark. R. Evid. 401 for purposes of an award of treble damages under this section, of double damages under § 15-32-301, and of punitive damages. Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

Jury Instructions.

In a trespass and conversion of timber action, the trial court did not err in wording two interrogatories to the jury regarding a timber company's knowledge of a forged timber deed and whether the company removed the timber with probable cause to believe that it owned the timber, because these interrogatories followed the language of § 15-32-301, which authorized double damages if the timber cutting was "knowing," and this section, which provided for single damages only if the timber company had probable cause to believe that the timber was its own. Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

Statute of Limitations.

Estate administrator's amended complaint for the wrongful conversion of timber, brought on behalf of the estate, was time-barred under § 16-56-105(4) and (6), the three-year statute of limitations for trespass and conversion, and § 16-56-108, the two-year statute of limitations applicable to penal statutes where the penalty goes to the person suing, which included claims brought pursuant to this section. It was also barred because the administrator failed to meet the bond requirement of § 28-42-103. Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

Trespass.

It was not error for the trial court to have granted summary judgment against an individual in a landowner's action under this section; the case the individual cited had no application to an action like this one because of the nature of the statutory action, which was not the common law action for trespass. Shamlin v. Quadrangle Enters., 101 Ark. App. 164, 272 S.W.3d 128 (2008).

Whether the related individual was an independent contractor or an employee of the company was irrelevant under this section; the company was a sole proprietorship belonging to the owner and had no separate identity apart from the owner, and thus, when the individual, operating on behalf of the company, trespassed on the landowner's property, they were acting as one person and became liable as joint tortfeasors. Shamlin v. Quadrangle Enters., 101 Ark. App. 164, 272 S.W.3d 128 (2008).

18-60-103. Liability for damages by fire — Exception.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

Subchapter 2 — Ejectment and Trespass

18-60-201. Right of action generally.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

CASE NOTES

Analysis

Application.
Election of Remedies.

Application.

In that the very object of an ejectment action under this section was to obtain possession of land from one who wrongfully held possession, a home buyer's malicious-prosecution claim and her abuse of process claim were based on the same event, the seller's recovery of possession of the house; therefore, the circuit court was correct in holding that the abuse-of-process claim was barred by res judicata. Benedetto v. Justin Wooten Constr., LLC, 2009 Ark. App. 825, — S.W.3d — (2009), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 188 (Apr. 1, 2010).

Election of Remedies.

Where a railroad filed an ejectment action against respondents, who occupied its right-of-way, 49 U.S.C.S. § 10501(b) did not list ejectment as a matter that was within the jurisdiction of the Surface Transportation Board and the state trial court had subject matter jurisdiction over the ejectment action. Ouachita R.R., Inc. v. Circuit Court, 361 Ark. 333, 206 S.W.3d 811 (2005).

18-60-212. Recovery of lands held under tax title.

CASE NOTES

Analysis

Applicability.
Possession.

Applicability.

Pursuant to the terms of the patent, and by operation of 43 U.S.C.S. § 869-2, disputed property that was subject to a 1965 patent issued by the United States to the State of Arkansas reverted back to the United States after Arkansas lost its claim to the property by failing to timely challenge several tax deeds issued for the property, as required by this section. The disputed property could not end up in private hands because it was public land that had been conveyed to a governmental body for public use, i.e. for fish and wildlife management, which meant something more substantial than private hunting and fishing excursions. Flannigan v. Arkansas, 427 F. Supp. 2d 861 (E.D. Ark. 2006).

Possession.

Limited warranty deeds to the farm, although invalid because of the constitutionally insufficient notice to the railroad, still constituted color of title for purposes of the two-year limitations period in subsection (a) of this section, color of title alone was not sufficient to set in motion the statute of limitations; a purchaser with color of title also had to take possession, and no claim was made that the farm opened and operated a mine on the lands or drilled for and produced oil or gas. Therefore, the two-year statute of limitations in this section did not run against the railroad. Linn Farms & Timber Ltd. P'ship v. Union Pac. R.R., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 51714 (E.D. Ark. May 25, 2010).

18-60-213. Recovery for improvements and taxes paid on land of another.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

CASE NOTES

In General.

In an action for rescission of a contract in a court of equity, the court applied equitable principles in an attempt to restore the status quo or place the parties in their respective positions at the time of the sale; based on those principles, it followed that the sellers had to return all monies that the buyers spent on the house, including money spent on improvements, where the contract had been rescinded. Hudson v. Hilo, 88 Ark. App. 317, 198 S.W.3d 569 (2004).

Subchapter 3 — Forcible Entry and Detainer — Unlawful Detainer

SECTION.
18-60-304. Actions constituting unlawful detainer.
18-60-306. Jurisdiction.
18-60-307. Proceedings in court.
18-60-309. Judgment for plaintiff — Assessment of damages — Writs of possession and restitution.
18-60-310. Execution of writ of possession.

18-60-304. Actions constituting unlawful detainer.

A person shall be guilty of an unlawful detainer within the meaning of this subchapter if the person shall, willfully and without right:

(1) Hold over any land, tenement, or possession after the determination of the time for which it was demised or let to him or her, or the person under whom he or she claims;

(2) Peaceably and lawfully obtain possession of any land, tenement, or possession and hold it willfully and unlawfully after demand made in writing for the delivery or surrender of possession of the land, tenement, or possession by the person having the right to possession or his or her agent or attorney;

(3) Fail or refuse to pay the rent for the land, tenement, or possession when due, and after three (3) days' notice to quit and demand made in writing for the possession of the land, tenement, or possession by the person entitled to the land, tenement, or possession or his or her agent or attorney, shall refuse to quit possession;

(4) Fail to maintain the premises in a safe, healthy, or habitable condition; or

(5) Cause or permit the premises to become:

(A) A common nuisance subject to abatement under:

(i) Section 14-54-1501 et seq.;

(ii) The Arkansas Drug Abatement Act of 1989, § 16-105-401 et seq.; or

(iii) Any other law of this state; or

(B) A public or common nuisance under § 14-54-1701 et seq. as determined by a criminal nuisance abatement board.

History. Acts 1981, No. 615, § 4; A.S.A. 1947, § 34-1504; Acts 2005, No. 1431, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Property Law, 28 U. Ark. Little Rock L. Rev. 385.

CASE NOTES

Analysis

In General.
Jury Instructions.
Notice.
Proof.

In General.

Trial court erred in holding that a subtenant was an assignee rather than a sublessee and was not required to surrender possession of commercial premises upon breach by original lessee where the subtenant and original lessee's intention was that they consistently referred to their arrangement as a sublease; further, in their pleadings and at trial, the parties exclusively referred to the original tenant's transfer to the subtenant as a sublease rather than an assignment. Abernathy v. Adous, 85 Ark. App. 242, 149 S.W.3d 884 (2004).

Jury Instructions.

Trial court did not abuse its discretion in giving jury instructions on the unlawful detainer statute and the criminal possession of real property statute because the instructions were correct statements of the law since they tracked the statutory

language of subdivision (2) of this section and § 18-16-101(a) and (b)(1); there was some basis in the evidence to give the instructions because the lawfulness of the respective parties' legal right to possess real property bore on the issue of punitive damages, and the evidence did not demonstrate that an unlawful detainer action or misdemeanor charges were ever filed, but it was evident that there could have been grounds for such civil or criminal proceedings given the evidence adduced at trial. Schmidt v. Stearman, 2010 Ark. App. 274, — S.W.3d — (2010).

Notice.

In an unlawful-detainer action, trial court's award of treble damages for the period prior to the filing of the formal notice to vacate was proper because all subdivision (3) of this section required in cases of failure to pay rent was three days' written notice to quit and demand for possession. According to the owner's testimony, that was provided by her attorney's letter. Mendez v. Aguilar, 2010 Ark. App. 268, — S.W.3d — (2010).

Proof.

Substantial evidence supported finding of a city's unlawful detainer, and, because substantial evidence of the rent due was presented, there was no need for evidence of fair market value; however, the triple damages award against the city was error because the space rented by the city was used as a courtroom, and was not used for any purpose pertaining to commerce. Thus, there was no entitlement to triple damages under § 18-60-309(b)(2). City of Pine Bluff v. Pine Bluff/Jefferson County Library, 2010 Ark. 327, — S.W.3d — (2010).

18-60-306. Jurisdiction.

(a) Forcible entries and detainers and unlawful detainers are cognizable before the:

(1) Circuit court of any county in which the offenses may be committed; and

(2) District court with jurisdiction concurrent with the jurisdiction of the circuit court, if permitted by rule or order of the Supreme Court.

(b) As used in this subchapter, "court" means:

(1) A circuit court; and

(2) If permitted by rule or order of the Supreme Court, a district court.

History. Acts 1981, No. 615, § 6; A.S.A. 1947, § 34-1506; Acts 2007, No. 535, § 1.

Amendments. The 2007 amendment rewrote present (a), and added (b).

18-60-307. Proceedings in court.

(a) When any person to whom any cause of action shall accrue under this subchapter shall file in the office of the clerk of the court a complaint signed by him or her, his or her agent or attorney, specifying the lands, tenements, or other possessions so forcibly entered and detained, or so unlawfully detained over, and by whom and when done, and shall also file the affidavit of himself or herself or some other credible person for him or her, stating that the plaintiff is lawfully entitled to the possession of the lands, tenements, or other possessions mentioned in the complaint and that the defendant forcibly entered upon and detained them or unlawfully detains them, after lawful demand therefor made in the manner described in this subchapter, the clerk of the court shall thereupon issue a summons upon the complaint. The summons shall be in customary form directed to the sheriff of the

county in which the cause of action is filed, with direction for service thereof on the named defendants. In addition, he or she shall issue and direct the sheriff to serve upon the named defendants a notice in the following form:

"NOTICE OF INTENTION TO ISSUE WRIT OF POSSESSION

You are hereby notified that the attached complaint in the above styled cause claims that you have been guilty of [forcible entry and detainer] [unlawful detainer] (the inapplicable phrase shall be deleted from the notice) and seeks to have a writ of possession directing the sheriff to deliver possession of the lands, tenements, or other possessions described in the complaint delivered to the plaintiff. If, within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, you have not filed in the office of the clerk of this court a written objection to the claims made against you by the plaintiff for possession of the property described in the complaint, then a writ of possession shall forthwith issue from this office directed to the sheriff of this county and ordering him to remove you from possession of the property described in the complaint and to place the plaintiff in possession thereof. If you should file a written objection to the complaint of the plaintiff and the allegations for immediate possession of the property described in the complaint within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, a hearing will be scheduled by the court to determine whether or not the writ of possession should issue as sought by the plaintiff. If you continue to possess the property described in the complaint, you are required to deposit into the registry of the court a sum equal to the amount of rent due on the property and continue paying rent into the registry of the court during the pendency of these proceedings in accordance with your written or verbal rental agreement. Your failure to tender the rent due without justification is grounds for the court to grant the writ of possession.

Clerk of Circuit/District Court"

(b) If, within five (5) days, excluding Sundays and legal holidays, following service of this summons, complaint, and notice seeking a writ of possession against the defendants named therein, the defendant or defendants have not filed a written objection to the claim for possession made by the plaintiff in his or her complaint, the clerk of the court shall immediately issue a writ of possession directed to the sheriff commanding him or her to cause the possession of the property described in the complaint to be delivered to the plaintiff without delay, which the sheriff shall thereupon execute in the manner described in § 18-60-310.

(c)(1) If a written objection to the claim of the plaintiff for a writ of possession shall be filed by the defendant or defendants within five (5) days from the date of service of the notice, summons, and complaint as provided for in this section, the plaintiff shall obtain a date for the

hearing of the plaintiff's demand for possession of the property described in the complaint at any time thereafter when the matter may be heard by the court and shall give notice of the date, time, and place of the hearing by certified mail, postage prepaid, either to the defendant or to his or her or their counsel of record.

(2) If the defendant continues to possess the property described in the plaintiff's complaint during the pendency of the proceedings under this subchapter, the defendant is required to deposit into the registry of the court at the time of filing the written objection a sum equal to the amount of rent due on the property and continue paying rent into the registry of the court in accordance with the written or verbal rental agreement.

(3) The failure of the defendant to deposit into the registry of the court the rent due or any rent subsequently due during the pendency of the proceeding under this subchapter without justification is grounds for the court to grant the writ of possession.

(d)(1)(A) If a hearing is required to be held on the demand of the plaintiff for an immediate writ of possession, the plaintiff shall there present evidence sufficient to make a prima facie case of entitlement to possession of the property described in the complaint. The defendant or defendants shall be entitled to present evidence in rebuttal thereof.

(B)(i) If the court decides upon all the evidence that the plaintiff is likely to succeed on the merits at a full hearing and if the plaintiff provides adequate security as determined by the court, then the court shall order the clerk forthwith to issue a writ of possession to the sheriff to place the plaintiff in possession of the property described in the complaint, subject to the provisions of subsection (e) of this section.

(ii) No such action by the court shall be final adjudication of the parties' rights in the action.

(2) A plaintiff demanding an immediate writ of possession who is a housing authority and who claims in its complaint that the defendant or defendants are being asked to surrender possession as a result of the defendant or defendants having been convicted of a criminal violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-608, shall be entitled to receive an expedited hearing before the court within ten (10) days of the filing of the objection by the defendant or defendants.

(e) If the defendant desires to retain possession of the property, the court shall allow the retention upon the defendant's providing, within five (5) days of issuance of the writ of possession, adequate security as determined by the court.

History. Acts 1981, No. 615, § 7; A.S.A. 1947, § 34-1507; Acts 1989 (3rd Ex. Sess.), No. 11, § 1; 2007, No. 535, § 2; 2007, No. 728, §§ 1, 2.

Amendments. The 2007 amendment by No. 535 deleted "circuit" preceding "court" in the first sentence in (a) and in (b), and preceding "clerk" in the second sentence in the Notice in (a); deleted "of the county in which the offense shall be committed" preceding "a complaint" near the beginning of the first sentence in (a);

in the Notice, substituted "court" for "county" in the second sentence, deleted "of this county" preceding "to determine" in the last sentence, and substituted "Clerk of ... Circuit/District Court" for "Circuit Clerk of ... County."

The 2007 amendment by No. 728 added the last two sentences of the notice in (a), and added (c)(2) and (3).

CASE NOTES

Cited: Abernathy v. Adous, 85 Ark. App. 242, 149 S.W.3d 884 (2004).

18-60-309. Judgment for plaintiff — Assessment of damages — Writs of possession and restitution.

(a) If upon the trial of any action brought under this subchapter the finding or verdict is for the plaintiff, the court or jury trying it shall assess the amount to be recovered by the plaintiff for the rent due and agreed upon at the time of the commencement of the action and up to the time of rendering judgment or, in the absence of an agreement, the fair rental value.

(b) In addition thereto in all cases the court shall assess the following as liquidated damages:

(1) When the property sought to be recovered is used for residential purposes only, the plaintiff shall receive an amount equal to the rental value for each month, or portion thereof, that the defendant has forcibly entered and detained or unlawfully detained the property; and

(2) When the property sought to be recovered is used for commercial or mixed residential and commercial purposes, the plaintiff shall receive liquidated damages at the rate of three (3) times the rental value per month for the time that the defendant has unlawfully detained the property.

(c)(1) Thereupon the court shall render judgment in favor of the plaintiff for the recovery of the property and for any amount of recovery that may be so assessed with costs.

(2) If possession of the premises has not already been delivered to the plaintiff, the court shall cause a writ of possession to be issued commanding the sheriff to remove the defendant from possession of the premises and to place the plaintiff in possession thereof.

(d)(1) In case the finding or verdict is for the defendant, the court shall give judgment thereon with costs and for any damages that may be assessed in favor of the defendant.

(2) If the property described in the complaint has been turned over to the possession of the plaintiff, the court shall also issue a writ of restitution directed to the sheriff to cause the defendant to be repossessed of the property.

(e) Any monetary judgments awarded either to the plaintiff or the defendant may be recovered upon in any manner otherwise authorized by law.

(f) Upon final disposition of the action, the court shall distribute any money paid by the defendant under § 18-60-307(c) into the registry of

the court first toward satisfaction of the plaintiff's judgment, if any, and the remainder to the defendant.

History. Acts 1981, No. 615, § 9; A.S.A. 1947, § 34-1509; Acts 2007, No. 728, § 3.

Amendments. The 2007 amendment added (f).

CASE NOTES

Analysis

Damages.
Rental Value.

Damages.

Where trial court found son unlawfully detained his father's property but only awarded damages in the amount of the fair-market-rental value from August 17, 2001, until possession of said lands was delivered, in contravention of subdivision (b)(1) of this section, the circuit court failed to award the mandated liquidated damages in the amount of $300 per month for the same time period. Waterall v. Waterall, 85 Ark. App. 363, 155 S.W.3d 30 (2004).

Court properly awarded landlord treble damages for tenants' holdover where tenants' failure to vacate was wilful; tenants were told by landlord in an October 2 letter that a default would be declared if they performed again in an untimely manner, however, tenants failed to tender the November rent until November 4 and then asserted, without a reasonable basis therefore, that their payment was timely. Southway Corp. v. Metro. Realty & Dev. Co., LLC, 90 Ark. App. 51, 206 S.W.3d 250 (2005).

Substantial evidence supported finding of a city's unlawful detainer, and, because substantial evidence of the rent due was presented, there was no need for evidence of fair market value; however, the triple damages award against the city was error because the space rented by the city was used as a courtroom, and was not used for any purpose pertaining to commerce. Thus, there was no entitlement to triple damages under subdivision (b)(2) of this section. City of Pine Bluff v. Pine Bluff/Jefferson County Library, 2010 Ark. 327, — S.W.3d — (2010).

In an unlawful-detainer action, a store owner was entitled to back rental and treble damages pursuant to subdivision (b)(2) of this section because the trial court did not abuse its discretion under Ark. R. Civ. P. 15(b) in refusing to dismiss the owner's treble-damages claim, which was pled the day of trial. It was apparent from the commencement of the proceeding that the property involved was commercial. Mendez v. Aguilar, 2010 Ark. App. 268, — S.W.3d — (2010).

Use of the word "shall" in subsection (b) of this section mandates an award of liquidated damages to the owner in an action for unlawful detainer. Cleary v. Sledge Props., 2010 Ark. App. 755, — S.W.3d — (2010).

Rental Value.

After awarding summary judgment to defendant on plaintiff's adverse possession claim, a trial court erred under subsection (a) of this section in denying defendant's claim for damages on its unlawful detainer counterclaim; if the use of the word "shall" was deemed to mandate an award of liquidated damages under subsection (b), it was deemed to mandate an award of damages for the fair market rental of the property under subsection (a). Cleary v. Sledge Props., 2010 Ark. App. 755, — S.W.3d — (2010).

18-60-310. Execution of writ of possession.

(a) Upon receipt of a writ of possession from the clerk of the court, the sheriff shall immediately proceed to execute the writ in the specific manner described in this section and, if necessary, ultimately by ejecting from the property described in the writ the defendant or defendants and any other person or persons who shall have received or entered into the possession of the property after the issuance of the

writ, and thereupon notify the plaintiff that the property has been vacated by the defendant or defendants.

(b)(1) Upon receipt of the writ, the sheriff shall notify the defendant of the issuance of the writ by delivering a copy thereof to the defendant or to any person authorized to receive summons in civil cases and in like manner.

(2) If, within eight (8) hours of receipt of the writ of possession, the sheriff shall not find any such person at their normal place of residence, he or she may serve the writ of possession by placing a copy conspicuously upon the front door or other structure of the property described in the complaint, which shall have like effect as if delivered in person pursuant to the terms of this section.

(c)(1) If, at the expiration of twenty-four (24) hours from the service of the writ of possession in the manner indicated, the defendants or any or either of them shall be and remain in possession of the property or possession has not been returned to the plaintiff, the sheriff shall notify the plaintiff or his or her attorney of that fact and shall be provided with all labor and assistance required by him or her in removing the possessions and belongings of the defendants from the affected property to a place of storage in a public warehouse or in some other reasonable safe place of storage under the control of the plaintiff until a final determination by the court.

(2) If the determination is in favor of the defendant, then the possessions and belongings of the defendant shall be immediately restored to the defendant with the cost of storage assessed against the plaintiff.

(3) If the determination is in favor of the plaintiff, and it includes a monetary judgment for the plaintiff, then the court shall order the possessions and belongings of the defendant sold by the plaintiff in a commercially reasonable manner with the proceeds of the sale applied first to the cost of storage, second to any monetary judgment in favor of the plaintiff, and third any excess to be remitted to the defendant.

(d) In executing the writ of possession, the sheriff shall have the right forcibly to remove all locks or other barriers erected to prevent entry upon the premises in any manner which he or she deems appropriate or convenient and, if necessary, physically to restrain the defendants from interfering with the removal of the defendants' property and possessions from the property described in the writ of possession.

(e) The plaintiff shall not be required to give any bond, unless ordered to do so by the court, as a condition to the execution of the writ by the sheriff.

(f) The sheriff shall return the writ at or before the return date of the writ and shall state in his or her return the manner in which he or she executed the writ and whether or not the properties described therein have been delivered to the plaintiff and, if not, the reason for his or her failure to do so.

History. Acts 1981, No. 615, § 8; A.S.A. 1947, § 34-1508; Acts 1987, No. 577, § 1; 2007, No. 535, § 3.

Amendments. The 2007 amendment deleted "circuit" preceding "court" in (a).

CASE NOTES

Construction.

Where the sheriff, relying upon a mandate from the court, executed an Order of Immediate Possession on defendant and was of the understanding that he had complied with this section, based on the totality of the circumstance, suppressing the evidence would not serve the remedial purposes of the exclusionary rule. Deshazo v. State, 95 Ark. App. 398, 237 S.W.3d 493 (2006).

18-60-311. Judgment for defendant.

CASE NOTES

Cited: Harness v. Curtis, 87 Ark. App. 337, 192 S.W.3d 267 (2004).

Subchapter 4 — Partition and Sale of Land

18-60-401. Petition.

CASE NOTES

Analysis

Constitutionality.
Cotenants.

Constitutionality.

Trial court erred in refusing to set aside a confirmation of a judicial sale of land held by the grandsons to satisfy an attorney's lien for representation of one grandson; the grandson was not afforded due process before his interest in the property was ordered to be sold, §§ 18-60-401 and -403, and the attorney's lien rendered the order void as to him. Williams v. Hall, 98 Ark. App. 90, 250 S.W.3d 581 (2007).

Cotenants.

Where appellants failed to identify the precise interests held in the property they were seeking to divide, a grant of a partition under subdivision (b)(1) of this section would not only have been improper, but would have been impossible. Trice v. Trice, 91 Ark. App. 309, 210 S.W.3d 147 (2005).

18-60-403. Parties generally.

CASE NOTES

Constitutionality.

Trial court erred in refusing to set aside a confirmation of a judicial sale of land held by the grandsons to satisfy an attorney's lien for representation of one grandson; the grandson was not afforded due process before his interest in the property was ordered to be sold, §§ 18-60-401 and -403, and the attorney's lien rendered the order void as to him. Williams v. Hall, 98 Ark. App. 90, 250 S.W.3d 581 (2007).

18-60-412. Judgment.

CASE NOTES

Finality.

In a partition action, the final, appealable order was the one filed on April 2, 2009, which directed the commissioner to disburse funds to the parties as their interests appeared from the evidence, as provided under subsection (a) of this section. Until the final order to disburse the proceeds of the sale to the parties as their interests appeared, the circuit court was at liberty to reconsider prior rulings and decisions. Vaughn v. Bates, 2010 Ark. App. 98, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 245 (Mar. 10, 2010).

18-60-414. Appointment of commissioners.

CASE NOTES

Construction.

Contrary to the appellant child's argument in a partition action, while the partition statutes contemplated the sale being made by three commissioners, it was not reversible error for the circuit court to name the circuit clerk to serve as a commissioner and conduct the sale. The appointment of commissioners was permissive and not required under the law. Vaughn v. Bates, 2010 Ark. App. 98, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 245 (Mar. 10, 2010).

18-60-419. Attorney's fees.

CASE NOTES

Entitlement.

On appeal from an award of attorney fees in a partition action, subdivision (a)(1) of this section specifically directed the circuit court to award a reasonable attorney fee, to be taxed as costs, to the attorney who brought the partition suit; the motion for those fees was timely filed prior to the entry of the final, appealable order consistent with the relevant statutes and rules. Therefore, the appellant child's argument was without merit. Vaughn v. Bates, 2010 Ark. App. 98, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 245 (Mar. 10, 2010).

Cited: Hearne v. Banks, 2009 Ark. App. 590, — S.W.3d — (2009).

Subchapter 5 — Quieting Title Generally

SECTION.

18-60-501. Proceedings generally.

CASE NOTES

Color of Title.

Trial court properly quieted title in an individual, as the tax deed to the individual was sufficient and could properly have been considered color of title, and a particular quitclaim deed was also sufficient because it contained proper metes-and-bounds descriptions of the tracts in question; furthermore, the description contained in the exchange of quitclaim deeds had been used to assess the property since 1997 and the taxes had been paid on this assessment since that time. J. Michael Enters. v. Oliver, 101 Ark. App.

48, 270 S.W.3d 388 (2007), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 272 (Apr. 24, 2008).

18-60-502. Petition.

(a) A claimant shall file in the office of the clerk of the circuit court of the county in which the land is situated a petition describing the land and stating facts which show a prima facie right and title to the land in himself or herself and that there is no adverse occupant thereof.

(b)(1) The petitioner shall initiate a search of the following records in order to identify persons entitled to notice and shall provide notice pursuant to subdivision (b)(2) of this section:

(A) Land title records in the office of the county recorder;

(B) Tax records in the office of the county collector;

(C) Tax records in the office of the county treasurer;

(D) Tax records in the office of the county assessor;

(E) For an individual, records of the probate court for the county in which the property is located;

(F) For an individual, voter registration records maintained by the Secretary of State;

(G) For a partnership, partnership records filed with the county clerk; and

(H) For a business entity other than a partnership, business entity records filed with the Secretary of State.

(2)(A) The petitioner shall send notice by certified mail to the last known address in duplicate, with one (1) copy addressed by name to the person entitled to notice and the other copy addressed to "occupant", and if the certified mail is returned undelivered, the petitioner shall send a second notice by regular mail.

(B) The petitioner shall post a notice of the pending quiet title action conspicuously on the property.

(3) If the petitioner has knowledge of any other person who has, or claims to have, interest in the lands, the petitioner shall so state, and the person or persons shall be summoned as defendants in the case.

(c) The petitioner may embrace in his or her petition as many tracts of land as he or she sees proper so long as they all lie in the county.

History. Acts 1899, No. 79, §§ 2, 10, p. 133; C. & M. Dig., §§ 8363, 8364; Pope's Dig., §§ 10959, 10960; A.S.A. 1947, §§ 34-1902, 34-1903; Acts 2007, No. 1037, § 1.

Amendments. The 2007 amendment rewrote (b).

18-60-503. Publication of notice — Cancellation of liens.

CASE NOTES

Notice Not Required.

Koonce v. Mitchell, 341 Ark. 716, 19 S.W.3d 603 (2000), has no application where a dispute involves the location of a single boundary between two parcels of land, one of which is undisputedly owned by one party and one of which is undisputedly owned by another party. Therefore,

the notice requirements of § 18-60-503(a) did not have to be met in an adverse possession case where only two parties were involved in a dispute over land separated by a fence. Boyd v. Roberts, 98 Ark. App. 385, 255 S.W.3d 895 (2007).

18-60-508. Decree — Effect.

CASE NOTES

Attack on Decree.

Summary judgment was improperly granted to an operator and a lessee as they failed to show evidence of entitlement to litigate the validity of a 1976 quiet-title decree based on potential claimants, thus, the limitations in § 18-60-510 applied, and a collateral attack was improper since there were no jurisdictional defects; the operator and the lessee failed to show how any potential claimant came within the reach of subsection (b) of this section as they did not identify any individual who they claimed was seeking royalties, or show that a predecessor in title adverse to the owners was known, but not named in the 1976 action. Verkamp v. Floyd E. Sagely Props., 96 Ark. App. 61, 238 S.W.3d 619 (2006).

18-60-510. Setting aside decree.

CASE NOTES

Applicability.

Summary judgment was improperly granted to an operator and a lessee as they failed to show evidence of entitlement to litigate the validity of a 1976 quiet-title decree based on potential claimants; thus, the limitations in this section applied, and a collateral attack was improper since there were no jurisdictional defects. Verkamp v. Floyd E. Sagely Props., 96 Ark. App. 61, 238 S.W.3d 619 (2006).

Subchapter 6 — Quieting Title — Public Sales

18-60-601. Proceedings to confirm public sales.

CASE NOTES

Tax Sales.

Debtor who was in possession of the property at issue and who claimed an equitable interest in the property was entitled to challenge the quiet title action asserted by the subsequent purchaser, after that purchaser bought the property in a tax sale and sought to quiet title under § 18-60-601, because the debtor had alleged an equitable interest in the property and the debtor had not received notice of the tax sale. In re Paro, 362 B.R. 419 (Bankr. E.D. Ark. 2007).

18-60-602. Petition for confirmation — Affidavit.

(a) The petition for confirmation shall be filed with the clerk of the circuit court of the county at least twenty (20) days prior to the first day of the term of court at which application is to be made.

(b) The petitioner, if he or she is acquainted with the lands, shall file with his or her petition his or her affidavit, or the affidavit of some person who is acquainted with the lands, showing that there is no person in actual possession of the lands claiming title adverse to the petitioner, proof that taxes owed on the lands were either paid, settled, or released shall be filed with the petition and, in the case of levee or drainage improvement districts, proof of payment, settlement, or release of all delinquent taxes.

History. Rev. Stat., ch. 149, § 3; Acts 1893, No. 95, § 2, p. 165; C. & M. Dig., §§ 8384, 8385; Pope's Dig., §§ 10980, 10981; Acts 1951, No. 263, § 2; A.S.A. 1947, § 34-1920; Acts 2007, No. 1037, § 2.

Amendments. The 2007 amendment, in (b), substituted "proof that taxes owed on the land were either paid, settled, or released" for "copies of the tax receipts showing payment of the taxes for the three (3) years next preceding the publication of the notice to confirm" and "proof of payment, settlement, or release" for "copies of tax receipts showing payment."

18-60-603. Publication of notice.

(a)(1) When land is not made redeemable by any law of this state applicable to the sale, or, if redeemable, at any time after the expiration of the time allowed for the redemption, at all sales which have been or may be made, the purchaser, the heirs and legal representative of the purchaser, or the assignee of the purchaser or the heirs or legal representative of the assignee, may publish a notice.

(2) This notice shall be published four (4) weeks in succession in some newspaper published in the county where the land lies, if there is a newspaper published in the county or, if not, in the nearest newspaper having a bona fide circulation in the county.

(3) The notice shall call on all persons who can set up any right to the land so purchased in consequence of any informality or any irregularity connected with the sale to show cause, at the first term of the circuit court of the county after the publication of the notice, why the sale so made should not be confirmed.

(4) The notice shall state the authority under which the sale took place and give the description of the land purchased and the nature of the title by which it is held.

(b) The last insertion of the notice in the newspaper shall be at least twenty (20) days before the application for confirmation is submitted to the court for trial.

(c) Proof of the publication of the notice shall be made in the same manner as proof of publication of notices in other circuit court causes.

(d) The clerk of the court shall notify any delinquent tax owner or owners at their last known address by registered mail at least twenty (20) days before the application for confirmation is submitted to the court for trial.

History. Rev. Stat., ch. 149, § 2; Acts 1893, No. 95, § 1, p. 165; C. & M. Dig., §§ 8380-8382; Pope's Dig., §§ 10976-10978; Acts 1951, No. 349, § 1; 1955, No. 264, § 2; A.S.A. 1947, § 34-1919; Acts 2005, No. 1962, § 77.

18-60-604. Petition taken as confessed.

If the deed or deeds are in proper legal form and properly executed, if there is proof showing payment, settlement, or release of the taxes, and if the evidence shows that no one is in possession adverse to the petitioner, then in case no one has appeared to show cause against the prayer of the petitioner, the petition shall be taken as confessed and the court shall render final decrees confirming the sale in question.

History. Rev. Stat., ch. 149, § 4; Acts 1893, No. 95, § 3, p. 165; C. & M. Dig., § 8388; Pope's Dig., § 10984; Acts 1951, No. 263, § 3; A.S.A. 1947, § 34-1921; Acts 2007, No. 1037, § 3.

Amendments. The 2007 amendment substituted "there is proof showing payment, settlement, or release" for "the tax receipts show payment."

18-60-606. Evidence at trial.

(a)(1) On the trial of the cause, the petitioner shall exhibit to the court proof that taxes owed on the lands were either paid, settled, or released and, in the case of lands acquired from levee and drainage improvement districts:

(A) All delinquent taxes that have been paid, settled, or released;

(B) The deed or deeds under which he or she claims title, or the record thereof, or a certified copy or copies from the record; and

(C) Oral or written proof by one (1) or more witnesses acquainted with the lands showing that no one is in possession claiming adverse to the petitioner.

(2) The name of the witness or witnesses so sworn shall be preserved in the decree.

(b) A sheriff's or land commissioner's deed, given in the usual form, without witnesses, shall be taken and considered by the court as sufficient evidence of the authority under which the sale was made, the description of the land, and the price at which it was purchased.

History. Rev. Stat., ch. 149, §§ 4, 5; Acts 1893, No. 95, § 3, p. 165; C. & M. Dig., §§ 8386, 8387, 8390; Pope's Dig., §§ 10982, 10983, 10986; Acts 1951, No. 263, § 3; A.S.A. 1947, §§ 34-1921, 34-1922; Acts 2007, No. 1037, § 4.

Amendments. The 2007 amendment, in (a)(1), substituted "proof that taxes owed on the lands were either paid, settled, or released" for "the tax receipts showing the payment of the taxes for at least three (3) successive years" in the introductory paragraph, and "paid, settled, or released" for "due" in (A).

18-60-607. Confirmation of sale.

(a) There should be no confirmation of the sale of any lands that are in actual possession of any person claiming title adverse to the petitioner, nor shall there be any confirmation of the sale of lands unless the petitioner or his or her grantor or those under whom he or she claims title submits proof that all taxes owed on the lands have been paid, settled, or released.

(b) With respect to land in levee and drainage improvement districts, there shall be no confirmation of sale unless title has been acquired as

referred to in § 18-60-601, nor unless the petitioner or his or her grantor or grantors exhibit proof of payment, settlement, or release of all taxes that are due against the lands in the districts at the time of the rendition of the decree of confirmation by the court.

History. Rev. Stat., ch. 149, § 3; Acts 1893, No. 95, § 2, p. 165; C. & M. Dig., § 8383; Pope's Dig., § 10979; Acts 1951, No. 263, § 2; A.S.A. 1947, § 34-1920; Acts 2007, No. 1037, § 5.

Amendments. The 2007 amendment substituted "submits proof that all taxes owed on the lands have been paid, settled, or released" for "has paid the taxes on the lands for at least two (2) years after the expiration of the right of redemption, the payment of taxes to be three (3) consecutive years immediately prior to the application to confirm" in (a); inserted "settlement, or release" in (b); and made a related change.

Subchapter 8 — Recovery of Personal Property and Replevin

18-60-801. Definitions.

CASE NOTES

Cited: Webster Bus. Credit Corp. v. Bradley Lumber Co., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 105520 (W.D. Ark. Dec. 18, 2008).

18-60-804. Petition for recovery of personal property.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Property Law, 26 U. Ark. Little Rock L. Rev. 965.

18-60-819. Arrest and discharge of defendant.

CASE NOTES

Cited: Omni Holding & Dev. Corp. v. 3D.S.A., 356 Ark. 440, 156 S.W.3d 228 (2004).

CHAPTER 61

STATUTES OF LIMITATIONS

18-61-101. Actions to recover land, tenements, or hereditaments.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Property Law, 26 U. Ark. Little Rock L. Rev. 969.

CASE NOTES

Analysis

Adverse Possession.
—Public Thoroughfares.
—Sufficiency of Evidence.
Boundary Lines.
Running of Statute Generally.

Adverse Possession.

—Public Thoroughfares.

Road in question had been maintained by the highway department for a number of years and by the public for 55 to 60 years to gain access to a nearby river, and the landowners' predecessor in interest made no effort to close the road or to deny the public access; thus, there was sufficient evidence to show that the public openly and continuously used the roadway in question for seven years or more, and that the facts and circumstances surrounding the usage were such that the landowners knew or should have known it was adverse. Carson v. County of Drew, 354 Ark. 621, 128 S.W.3d 423 (2003).

—Sufficiency of Evidence.

Public prescriptive easement existed in the landowners' roadway, turnaround, landing, and parking area where the public had used property for more than seven years and landowners knew or should have known of adverse possession; because there was an acquiescence to long-time use, it operated to put landowners on sufficient notice of a claim of right. Carson v. County of Drew, 354 Ark. 621, 128 S.W.3d 423 (2003).

Neighboring land owner, who asserted a claim for an easement to use a gravel drive, failed to show the elements necessary to establish an easement by prescription because the land owner only showed that he had been continuously using the gravel drive for less than seven years, and when he was told to stop using the drive, he did. Drummond v. Shepherd, 97 Ark. App. 244, 247 S.W.3d 526 (2007).

Boundary Lines.

Trial court did not abuse its discretion in refusing to allow an individual to amend his pleadings under Ark. R. Civ. P. 15(b) to include a counterclaim for a prescriptive easement because the proof did not establish a prescriptive easement, given that there was no evidence of overt, adverse use for the statutory period under this section. Myers v. Yingling, 372 Ark. 523, 279 S.W.3d 83 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 219 (Apr. 10, 2008).

Running of Statute Generally.

Owners of land used by a city as a dump did not have a viable cause of action against the city for inverse condemnation because the seven-year statute of limitations had expired; the city's use of the land as a dump since the 1950s showed an intent to possess adversely, and no action had been filed previously. Daniel v. City of Ashdown, 94 Ark. App. 446, 232 S.W.3d 511 (2006).

Brother was unable to challenge the validity of a deed supposedly executed by his mother in 1984 because his action was filed 20 years later; the seven-year statute of limitations in this section began to run at the mother's death in 1992. Moreover, laches applied since the purported owner's position was detrimentally changed where witnesses were unavailable. Jaramillo v. Adams, 100 Ark. App. 335, 268 S.W.3d 351 (2007).

In a case where heirship was being determined, the action was not barred by the limitations periods in this section and § 16-56-115 because the time period did not begin to run until a pecuniary consequence arose; there had been no demand for the trust property that would have triggered the limitations period. Moreover, the case was filed within the limitations period if it began to run when mineral leases were executed. Scroggin v. Scroggin, 103 Ark. App. 144, 286 S.W.3d 758 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 743 (Oct. 22, 2008), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 502 (Mar. 19, 2009).

18-61-106. Recovery of lands held under tax title.

CASE NOTES

Validity of Deed or Sale.

Debtor who was in possession of the property at issue and who claimed an equitable interest in the property was entitled to challenge the quiet title action asserted by the subsequent purchaser, after that purchaser bought the property in a tax sale and sought to quiet title under § 18-60-601, because the debtor had alleged an equitable interest in the property and the debtor had not received notice of the tax sale. Debtor's claim was not barred by the statute of limitations set forth in § 18-61-106. In re Paro, 362 B.R. 419 (Bankr. E.D. Ark. 2007).